The University of Chicago

THE DOCTRINE OF CIVIL SERVICE NEUTRALITY IN PARTY CONFLICTS IN THE UNITED STATES AND GREAT BRITAIN

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE
1937

By
WEI-KIUNG CHEN

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CHAPTER I

INTRODUCTION

Public administration is increasingly influenced by the economic and social developments of a changing order. Whether one looks to the past or the present, it must be granted that the conception of government as a policing agency, concerned with the protection of personal liberty, has given way to a conception of government as a housekeeping agency, seeking to promote the welfare of its citizens in an affirmative way. In one way or another, the changes in economic and social order have given rise to new functions on the part of public agencies. This has meant an increase in the numbers of public employees and the necessity for new abilities and new skills.

As governmental functions continue to expand and the need for competent personnel becomes increasingly urgent, the inadequacy of the present personnel system in the various governmental jurisdictions becomes more evident than ever before. A better civil service is much needed. As Professor Leonard D. White has well stated "Unless we have assurance of a better civil service than that to which we have been accustomed, it is perilous, to say the least, to embark upon a broad program of social reorganization which rests primarily upon the activity of government."[1] Similarly the Commission of Inquiry on Public Service Personnel has pointed out that "the success or failure of that government, and the kind of service which it renders, will rest in the last analysis upon the capacity and character of the men and women who constitute it," and that "we must therefore maintain a governmental system under which the government attracts to the public service its full share of the capacity and character of the man power of the nation."[2]

The recognition of the importance of a better civil service

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[1] Leonard D. White, Government Career Service (Chicago: University of Chicago Press, 1935), p. ix.

[2] Better Government Personnel, Report of the Commission of Inquiry on Public Service Personnel (New York: McGraw-Hill Co., 1935), p. 15.

has led to the movement for government career service. Plans for the establishment of the career service have been formulated. One of the fundamental elements of the career service is permanent employment. Essential to the permanent employment is the neutrality of those who are in the service. This has been fully recognized by the Commission of Inquiry on Public Service Personnel, which has asserted that "the loyal acceptance of the decisions made by the public, and by their representatives, on the part of public servants is essential as a condition of the continued existence of career services." The Commission has also pointed out that in the exercise of "the right of partisan activity," members of the career service must not cause the newly elected officials any doubt as to the loyalty of their subordinates.[1] The kind of loyalty here mentioned is one of the qualities of neutrality.

As Professor Marshall E. Dimock has well stated, "The merit system cannot succeed in the long run unless the absolute neutrality of the civil service can be relied upon."[2] This means that political leaders of the government of the day and the public must have complete confidence in the impartial service of civil servants. And only the fact will create such confidence.

The importance of the doctrine of civil service neutrality was fully recognized in pre-Hitler Germany, in whose constitution the doctrine of neutrality was inscribed. Article 130 of the Weimar constitution proclaimed that "civil servants are servants of the whole community, not of a party."[3] Framers of the constitution realized that in a democratic state, the parliamentary government with changing majorities would lead to unbearable tension and chaos in public administration, unless the doctrine of civil service neutrality was cast into the constitutional law. It was also a tribute paid to the permanent civil service which, under the pre-war monarchy, had stood firmly "beyond the petty quarrels of the day, beyond the economic struggle for power, and beyond the strife of various political factions"; which, throughout the war, had demonstrated "its loyalty to the nation in the

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[1] Ibid., pp. 29-30.

[2] Marshall E. Dimock, Modern Politics and Administration (New York: American Book Co., 1937), p. 298.

[3] Carl Joachim Friedrich, "The German and Prussian Civil Service," in The Civil Service in the Modern State, ed. Leonard D. White (Chicago: University of Chicago Press, 1930), p. 396.

same way as the great field marshal"; and which continued faithfully its administrative work under the new authority.[1]

The British civil service has since the reform of 1854 steadily developed and reached a high degree of neutrality. It has stood firmly beyond the power-struggle of political parties. It commands the high esteem of the public and complete confidence of ministers. Members of the civil service may have personal convictions on matters of public policy and on conflicting ideologies of the present civilization, but they do not allow them to color the impartial advice to ministers and the equal service to the public.

The neutrality of the British civil service was most strikingly demonstrated during the first labour government. The Labour Party for the first time assumed power in 1923. Its ideas and philosophy were substantially unknown to civil servants in the higher ranks. Yet they served the government with equal loyalty and zeal. Mr. Sidney Webb testified to this effect in the following words:

> I and my colleagues in the House of Commons have had the experience of coming as new people to offices which might legitimately have presumptions and traditions against us, and I am sure I am speaking for all my colleagues when I say that we have nothing to complain of in regard to the loyalty, fidelity and zeal with which we found ourselves assisted during our short period of office.[2]

Speaking on the subject of the neutrality of public servants, Professor Marshall E. Dimock has again said:

> Russia, Italy, and Germany are able to get "spirited" administration. A dictatorship does not produce anemic public servants; but vigor can be purchased at too high a price. What a democratic country wants is unswerving loyalty, combined with consistently energetic efforts. There is no question that this is expecting a great deal. . . . .[3]

That this may not be altogether beyond achievement has been demonstrated by the experience of the British civil service. It is the purpose of this study to discuss the more important

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[1]Fritz Morstern Marx, "Civil Service in Germany," in Civil Service Abroad, the Commission of Inquiry on Public Service Personnel, Monograph 5 (New York: McGraw-Hill Co., 1935), pp. 195-96.

[2]Quoted by Herman Finer, Theory and Practice of Modern Government (London, 1932), II, 1398.

[3]Marshall E. Dimock, op. cit., p. 299.

aspects of the problem of developing the civil service neutrality in this country.

At this point, it is necessary to clarify the meaning of the terms "civil service" and "civil servant." These terms have received no authoritative definitions, and it appears that no such definition is possible. In the opinion of Dr. Carl Joachim Friedrich, the concept of "civil servant" contains, "like all legal concepts dealing with a social phenomenon whose existence reaches beyond the legal sphere," "a considerable element of arbitrariness."[1]

In England, the term "civil servant" has been defined for the purpose of certain special statutes, e.g., the Superannuation Acts, and the Trade Disputes and Trade Unions Act of 1927; but it has not been given a general interpretation. Obviously, a civil servant is a "Crown Servant." However, the term "Crown Servant" has not itself been authoritatively defined. There are cases in which the courts have been called upon to consider whether a person holding a particular position was a Crown Servant or not. But no comprehensive definition seems to have been attempted by the courts. Mr. N. E. Mustoe thinks that no authoritative definition of the term "civil servant" is possible. However, it would appear to be correct to say that "the civil service is the body of officials in the service of the Crown, who discharge duties belonging to the exercise of the King's executive powers, but not being members of His Majesty's naval, military or air forces, and not being the holders of political offices."[2]

The common usage of the terms "civil service" and "civil servant" in this country affords no adequate definition. The latter term has often been used to denote a person holding a position which is under the protection and regulation of the civil service law. Those employees of government who are not under the operation of the civil service law are considered to be outside the civil service. This definition is clearly too narrow.

The most comprehensive definition seems to be the one contained in the Rules of the United States Civil Service Commission, which is as follows:

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[1] Carl Joachim Friedrich, op. cit., p. 388.

[2] N. E. Mustoe, The Law and Organization of the British Civil Service (London, 1932), pp. 15-27.

> The classified service shall include all officers and employees in the executive civil service of the United States, heretofore or hereafter to be appointed or employed, in positions now existing or hereafter to be created, of whatever function or designation, whether compensated by a fixed salary or otherwise, except persons employed merely as laborers and persons whose appointments are subject to confirmation by the Senate.[1]

This definition is too broad, for, as Mr. Lucius Wilmerding has pointed out, it suggests, by inference, that the civil service contains all the nonmilitary employees of government in the executive, legislative and judicial departments, including president, senators, and judges.[2]

Some dictionaries define the civil service as "the department of public service that is under executive control, that is, neither military nor naval"; as "all service rendered to, and paid for, by a state or nation other than pertaining to military, naval, legislative, and judicial affairs"; as "all the branches of the public administrative service which are not military or naval."[3] According to these definitions, the civil service encompasses the entire executive branch of government, from chief executive and heads of departments down to messengers and charwomen. These definitions are also too broad, for they include political and policy-determining officials in the civil service.

The definition offered by Mr. Lucius Wilmerding seems to be more satisfactory. "The civil service," he says, "is the personnel of the administrative apparatus of government." The chief executive, the heads of major departments, and all officers who "are held accountable by the people and the legislature for the political direction of the government" are to be considered outside the civil service. The civil service is "a vast body of other officials, operating under no effective political responsibility but charged with the important business of devising the methods for carrying out political intent and of actually administering and executing those methods."[4] Political and non-political

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[1] United States Civil Service Commission, the Civil Service Rules, Rule II, Section 1.

[2] Lucius Wilmerding, Government by Merit (New York: McGraw-Hill Co., 1935), p. 2.

[3] Standard Dictionary; Webster's New International Dictionary.

[4] Lucius Wilmerding, op. cit., p. 2.

officials of government are distinguished. The latter body of officials, who are under no effective political responsibility, should be recruited on the basis of merit, disregarding their political affiliations, and they should be, at least ideally, the human machinery of government, possessing "unswerving loyalty, combined with consistently energetic efforts." This is the underlying theory of the civil service neutrality in a democratic country.

The doctrine of civil service neutrality is a doctrine of loyalty, impartiality, disinterestedness, and equality to be observed by civil servants in performing public functions. Loyalty means undivided allegiance to the government of the day. The civil servant must serve whatever party is in power with equally enterprising spirit and unrelaxing helpfulness. "Loyal acceptance of the decisions made by the public, and by their representatives" is a duty required of the civil servant. Partisan loyalty which is the result of his appointment by an administration on political grounds is incompatible with the doctrine of neutrality. The doctrine also imposes upon civil servants the duty of impartiality in political affairs. The civil servant, like any other citizen, is expected to have personal conviction or faith; but, unlike any other citizen, he may not take sides on those issues upon which the nation is divided. While the proper exercise of rights of citizenship may not be denied the civil servant, he may take no active part in the support or defeat of the principles or candidates of any political party. The doctrine of neutrality requires that civil servants perform their duties with a high degree of impartiality, disinterestedness, and detachment. The doctrine, finally, imposes upon civil servants the duty of treating all persons equally. They must be fair, must favor no one, and are to be guided only by the equal application of the laws. Differences of treatment which are likely to be the results of political antagonism, class or religious preferences should be excluded. The doctrine of civil service neutrality is, therefore, a doctrine under which civil servants are required to acknowledge no partisan loyalty but to be loyal to the government of the day, and to acknowledge no allegiance to any one class or section of the community but to be servants of all.

It must be remembered, however, that civil servants are human beings and as such they retain "the ordinary traits of human

nature." The "dual capacity" of civil servants leads to conflict in them between their public duties and their private desires and interests. Mr. Fritz M. Marx has shrewdly said:

> It is a blessing and, at the same time, a curse that the organs of government are made out of human substance. A blessing, because man can blame only himself for bad government. A curse, because the human substance tends to press forward certain all too human claims which interfere with the exercise of governmental functions. A point comes where the civil servant, too, insists upon his natural right to be nothing else but man--in the realm of politics--citizen.[1]

Private interests and desires of civil servants will always exist, and the best which we can expect of them is "the comination by the public weal of their other desires."[2] It is in this light that the doctrine of civil service neutrality must be looked upon.

Neutrality is an essential concomitant of permanent employment. If civil servants are appointed on political grounds by one administration to secure their implicit loyalty, they certainly cannot be accepted by a succeeding party of opposite faith as possessing the essential quality of loyalty to its programs as well. If civil servants may inculge in controversial politics, taking active part in the support or defeat of a political party, their days in the government service will undoubtedly be very short. Similarly, if they fail to treat all persons equally, they fail in their duty as servants of all, and their employment in public service can no longer be justified. Therefore, if the civil service is to become a permanent employment, there must be adequate measures by which the neutrality of civil servants can be maintained.

Whatever party may be in power, administration is essentially the same. The execution of policies or laws, however novel, requires the same set of skill, expertness and official routine. Efficient administration depends very basically upon the competence of men and women who do the work. Without a body of permanent civil servants who are competent and ready to serve whatever party in power with complete loyalty and impartiality, the government must fail.

In the formulation of policies, the political chief, be

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[1] Fritz M. Marx, op. cit., pp. 250-51.

[2] For the discussion of the "dual capacity" of governmental officials in general, see John Dewey's The Public and Its Problems (New York: Henry Holt Co., 1927), pp. 76-77.

he the chief executive or the head of a department, must have the advice of his permanent subordinates. From the latter he must seek the necessary information and technical considerations. Vacillation, uncertainty, and inconsistency in the conduct of government can only be avoided if administrative policies are formed with a full appreciation of the technical, legal, and financial considerations involved in them. However, it is perfectly clear that in making such important decisions, the political chief must have complete confidence in the loyalty and impartiality of his subordinates.

The doctrine of civil service neutrality is of special importance in the age of planning. Impartial assistance and advice of permanent officials who have vast practical experience and are technically competent are essential in the formulation of any practicable plan. Furthermore, the essence of planning is that its several parts shall be carried through to finality over a term of years, without the risk of the whole scheme being jeopardized by the vagaries of popular elections.

Thus, without exaggeration, Dr. Herman Finer has said:

> Whatever changes in political constellation, however great the shocks in the world of political conflict and however violent its resolutions, the State, which is certainty, regularity, order, must continue. It must not cease: cessation is mortal. The instrument of continuity of services which ex hypothesi are vital, is the Civil Service. Conceive the social and economic loss in modern England or Germany or the U. S. A. if the administrative services are the sports of political parties; the waste of organization, technique, expertness, professional zeal and uninterrupted devotion to duties! All parties in the State must be sure of a highly efficient instrument, however diverse their policies, for no policy is worth the paper it is written on unless there is an executive force behind it. Parties may differ on all things, but one thing is their common desire: power when they are in office, and such power is executive power. Our chief hope that political ministers and a helpless public will be prepared to learn from real science, resides in the flawless impartiality of their experts, and only the fact will create the confidence.[1]

Much as we may deplore it, the actions of political parties are generally regarded with suspicion. This is at least true as far as a large section of the community is concerned; that is, at any time, one part of the electorate is politically opposed to the government of the day, and is unwilling to admit that it can act with impartiality or detachment. There is also fear that the

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[1]Herman Finer, op. cit., II, 1398.

well-being of the people may be sacrificed whenever it suits political parties to make common cause with vested interests. There is, therefore, a demand for civil servants who will not be deflected from their impartiality, detachment, and equality by political and other promises.

The necessity of treating equally all persons, which is a quality of neutrality, is well stated by the French jurist Jeze in the following words: "All individuals fulfilling certain conditions, fixed in a general and impersonal manner by the organic law of the service (law, rules, general instructions) have the legal power of demanding the service, which is the object of the public service: this is the principle of the equality in relation to public administration."[1]

As state activity increases, this fundamental equality becomes more and more important in the relationship between the public and the service. The danger, especially in a democratic state, is conceivable, if civil servants who constitute the human machinery of government should be prejudiced against the rich or the poor, or if they should favor one class or one section of the community.

The importance of the doctrine of civil service neutrality may also be considered from the point of view of individual civil servants. It ensures security to the expert, who will hold his office irrespective of whatever party in power. As an English civil servant has stated, "from the point of view of the individual Civil Servant, the attractions of life service are, first, secondly, and lastly, security."[2] The feeling of security and the atmosphere which may be generated by the doctrine of neutrality allows a freer play of the qualities of a civil servant: his conscience, his zeal for the public good, his gratitude for special fitness for his post and the "craftsman's delight in his skill."

The importance of the doctrine of civil service neutrality in a democratic country cannot, indeed, be easily exaggerated. It is not surprising, therefore, that the pre-Hitler Germany inscribed the doctrine of neutrality in its constitution. The

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[1] Les principles generaux de droit administratif (3d ed.), III, 20. Quoted by Herman Finer, op. cit., II, 1179.

[2] Stanley M. Leathes, "Whole Life Service for Public Officials," Public Administration, The Journal of the Institute of Public Administration, VI, No. 3 (July, 1928), 318.

success of the British civil service has been regarded as the great political discovery made by England in the last century.[1]

What, we may now ask, are the conditions or measures essential to achieving or maintaining the doctrine of civil service neutrality? While no categorical answer may be made, certain conditions seem to stand out as essential to any civil service system in which such qualities of neutrality, as above stated, are to be found. One of these conditions is that the conduct of the civil service must be free from political influence. No political consideration should be allowed to enter such matters as recruitment, promotion, and discipline of civil servants. If the civil service may become a sport of political parties, the neutrality of such is utterly impossible. Another condition is that there must be proper restrictions upon the exercise of political rights by members of the civil service. Inevitably complete freedom of political activity is incompatible with the doctrine of neutrality. Members of the civil service must be protected from the levy of political assessments, and they must not be permitted to take active part in any political campaign for the defeat or support of the principles or candidates of any political party. Logically what civil servants may not do individually they may not do by association. Political activity on the part of organizations of civil servants in bringing pressure upon the legislature for the purpose of obtaining favorable legislation to their interests has been condemned. Affiliation of civil service unions with outside groups which are engaged in issues upon which the nation is divided would undoubtedly invite suspicion to the neutrality. Finally, in this country there is a certain more or less definite tendency toward professionalization of the civil service. The professional ethics which flow from such movement will have considerable value in improving the individual professional conduct and may prove to be the most effective safeguard of the civil service neutrality.

The development of the tradition of neutrality in the British civil service was facilitated by the common social and educational background of the permanent civil servants and political leaders. The foundation of this development, however, lies in the fact that in England the conduct of the civil service has been entirely independent of all political pressure. This has

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[1]Robert MacGregor Dawson, The Civil Service of Canada (London: Humphrey Milford, 1929), p. 112.

been well pointed out by Ramsay Muir. He says that the first of the three facts which are fundamental in the success of the British civil service is that appointments are no longer given for political reasons, as a reward for past services to a party, or on the condition of future services.[1] Professor Harold J. Laski, speaking of the success of the British civil service, has also said that "first, and most vital, is the fact that there is no normal entrance save through the avenues laid down by the Civil Service Commission, with its independence of all political pressure."[2]

Political interference in the conduct of the civil service in one way or another in most of the jurisdictions in this country presents the most formidable obstacle in the development of civil service neutrality. Such interference not only makes it highly difficult for civil servants to remain impartial, but also deflects the confidence of the public in the civil service. After making an intensive study of the valuation of the public of the civil service in Chicago, Professor White has come to the following conclusion:

> In the judgment of the writer, the opinion which was revealed by this experiment is fundamentally an expression of distrust of the general conditions under which work is performed for the city. The direction, supervision, control, and management of city employees is political, and has been political for so many years without interruption that the citizens of Chicago have little confidence in it.[3]

The patronage system or the system of "to the victor belong the spoils" had its origin in a much earlier period than has been generally supposed. It was the result of political expediency rather than well-formulated theory. It grew out of the necessity for political support in the competition for power between political parties; and this explains why it still has its stronghold in many jurisdictions today.

The necessity of certain limitations on the exercise of political rights by civil servants was recognized as early as the time of President Jefferson. It was feared that the republican form of government would be corrupted and rights of individuals

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[1]Ramsay Muir, Peers and Bureaucrats (London, 1922), p. 31.

[2]Harold J. Laski, "The British Civil Service," The Yale Review, XXVI, No. 2 (Winter, 1937), 340.

[3]Leonard D. White, The Prestige Value of Public Employment (Chicago: University of Chicago Press, 1929), p. 146.

usurped if government officials were not prohibited from using their official power to influence election. It was therefore proclaimed that government officers, while free to exercise the right to vote, should not take active part in political campaigns. It was realized later that prohibition of political activity of civil servants was essential to the success of checking party patronage.

To debar civil servants from a political career, is in the opinion of Professor Harold J. Laski, "the surest road to maximizing the neutrality of the civil service." For "the knowledge that this road is debarred to them is vital not only to the esprit de corps of the service but also to the freedom from political influence on its habits."[1] However, to what extent may the restrictions of political rights of civil servants be justified? It should be remembered that civil servants are citizens, and as such, they are entitled to, as they claim, the full rights of citizenship. In this country, this question has become a question of constitutional law.

Public employees in many of the governmental jurisdictions in this country have now been quite extensively unionized. Arising out of the union movement there are certain perplexing problems, the real solution of which may not be found in the state action. The civil service unions may be prohibited by law from affiliating with outside groups, political parties and organized labor; but is this a permanent solution? The doctrine of neutrality in the British civil service was seriously threatened in 1926 during the general strike. A serious question may be raised: Can the civil service neutrality be maintained in the face of "a vital problem of conscience"?[2]

In recent years numerous trade associations and professional groups have adopted codes of ethics to regulate or control the individual conduct. Such codes, accompanied by proper measures of enforcement, have proved to be a very effective means in improving professional conduct of the members. Professionalization of the civil service may likewise lead to the same development. Also, it appears that organized efforts of civil servants may be best utilized in this direction. Well writen and well

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[1] Harold J. Laski, op. cit., pp. 340 and 349.

[2] Infra., chap. vi.

observed codes of ethics of civil servants will undoubtedly facilitate very greatly the development and maintenance of the doctrine of civil service neutrality.

From what has been said above it appears clear that the doctrine of civil service neutrality is a necessary democratic device. It is a device by which popular control and efficient administration may be at once attained. Today, a democratic government with changing majorities will inevitably fail its mission, if it is without a body of permanent officials who are capable of assisting the political leaders in the formulation of governmental policies and of carrying out such policies with complete loyalty, impartiality, disinterestedness and equality. Democracy has been accused of its notorious inefficiency. The answer to such accusation lies in large measure in the development of the neutrality of the civil service.

Finally, the relationship between civil servants in higher ranks and political leaders with respect to policy is a very delicate one. It is clear that when a policy has once been settled, the civil servant must comply with it, even though he may not agree with it. This is the essential quality of loyalty. However, as Professor Laski has pointed out, "there is a world of difference between obedience given through the knowledge that is due and obedience given with energy of heart and mind." Some English students are seriously concerned with the possibility of "unconscious sabotage" on the part of British permanent civil servants in higher ranks, who are "more anxious not to make a mistake than to risk an adventure," if new experiments should be undertaken by the government. This suspicion is rested on their habits of mind and also on their social and educational background. The solution of this problem is not that they should be replaced with every change of political control, but in the broader recruitment policy and in the provision of sabbatical leave so that they may have opportunity to cultivate broader outlook.[1]

Another question is how should the civil servant act during the formulation of a policy. Lucius Wilmerding has well said: "The duties of administrative civil servants with respect to policy

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[1]Harold J. Laski, A Grammar of Politics (New Haven: Yale University Press, 1931), pp. 402-403; William A. Robson, "The Public Service," The Political Quarterly, VII, No. 2 (April, 1936), 183-186.

are twofold: first, to present fully and fairly to the head of the department all the material facts which bear upon an issue which is called upon to decide; second, themselves to decide such issues as are delegated to them by the head of the department."[1]

He further says that "in the performance of the second duty, needless to say, administrative officers are honor bound to decide such issues as their superior would have decided had he been able fully to consider them himself."[2] The question is whether the civil servant shall go further than "to present fully and fairly." Dr. Herman Finer has raised these interesting and important queries:

> Does this mean that he is to behave as the impassive servant who speaks only when he is spoken to? Is he to put his advice in the least rhetorical of terms and to make a positive duty of being neutral and colorless? Is he to criticize the politician's proposals not merely with scientific freedom but with warmth?[3]

The best view with respect to the whole question is that expressed in the Dardanelles Report:

> It is the duty of the official not to resign but to state fully to the head of his department, and should any proper occasion arise, to other members of the Ministry, what is the nature of his views. Then, if after due consideration, those views are overruled, he should do his best to carry out the policy of the government, even though he may not be in personal agreement with it. . . . . Undue loyalty would tend to cripple independence of thought, and would leave the Parliamentary heads of the various departments without the healthy assistance which they have a right to expect, and which is at times much more likely to be rendered by reasonable and deferential opposition than by mere agreement resting wholly on the ties of discipline.[4]

This independence of mind becomes more and more important as the state activity increases. Civil servants must give not only assistance but also persuasion. Neutrality implies the energetic tender of advice and not the timidity of the impassive servant.

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[1] Lucius Wilmerding, op. cit., p. 26.

[2] Ibid.

[3] Herman Finer, "Better Government Personnel," Political Science Quarterly, LI, No. 4 (December, 1936), 586.

[4] First Report, Dardannelles Commission, Cmd. 8490, 1917, para. 19.

CHAPTER IV

POLITICAL ACTIVITY OF CIVIL SERVANTS AND THE RESTRICTIONS

Modern democracy is built upon the basis of free choice. The fundamental law of the state guarantees to the citizen the rights which are necessary for the making of that free choice. Upon the intelligent exercise of such rights depends the success of democracy.

Civil servants by no means lose the status of citizenship by entering into the employ of the government. On the contrary, it has been not infrequently asserted that civil servants are better citizens by virtue of the fact that they are, having gone through the competitive examinations, qualified servants of the public, and, hence, measures should be taken to protect and to encourage, instead of limiting, their exercise of full rights of citizenship. Without going into the merits of such arguments, we may well ask whether the exercise of full rights of citizenship by members of the civil service will be incompatible with the doctrine of neutrality.

In England, the MacDonnell Commission of 1910-1914 was obliged to answer the following question: "Is it necessary or desirable, in the public interest, to place any restriction upon the exercise of full rights of citizenship by those citizens who are members of the Civil Service?"[1]

The Royal Commission had little doubt that complete liberty of political action for civil servants "would inevitably result in frequent conflicts between the desires and interests of the officer as a citizen and his duty as an official, and that such conflicts could not fail to have disastrous effect on the morale of the public service." It was pointed out that two results would very likely follow the removal of restrictions upon political rights of civil servants. First, the public might cease

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[1] Fourth Report of the Royal Commission on the Civil Service, Cmd. 7338 (1914), p. 95.

to believe in the impartiality of the permanent civil service; and, second, ministers might cease to have confidence in the loyal and faithful support of their subordinates and they might be led to scrutinize the political opinions of civil servants and to select for positions of confidence only those whose political sentiments were known to be in harmony with their own. Then, the Royal Commission said:

> If this were so, the system of recruitment by open competition would prove but a frail barrier against Ministerial patronage in all but the earlier years of service; the Civil Service would cease to be in fact an impartial non-political body, capable of loyal service to all Ministers and parties alike; the change would soon affect the public estimation of the Service, and the result would be destructive of what undoubtedly is at present one of the greatest advantages of our administrative system and one of the most honourable traditions of our public life.[1]

The Commission of Inquiry on Public Service Personnel, after extensive investigation, has reached the following conclusion regarding this matter:

> The loyal acceptance of the decisions made by the public, and by their elected representatives, on the part of public servants is essential as a condition of the continued existence of career services. This is especially important in America, as we have had the bad tradition of the spoils system in administration and have also a lively feeling that every citizen has the right to political activity regardless of his station. The right of partisan activity cannot be denied, but must be so exercised by members of the career service that newly elected officials will have no reason for doubting the loyalty of their subordinates, and that the members of the service may not develop attitudes and mental habits which make it impossible for them to work efficiently under whatever master the public may elect.[2]

Therefore, according to the Commission of Inquiry, loyalty to the government of the day is essential to the system of career service, and such loyalty depends upon the carefulness of civil servants in exercising their political rights. Should there be any restrictions upon the political rights of civil servants? If not, how should they exercise such rights so that their loyalty may not be doubted by the newly elected officials? Will there be danger of developing attitudes and mental habits on the part of civil servants, making it difficult for the elected officials to have complete confidence in them, if they are allowed to engage

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[1]The Royal Commission on the Civil Service, op. cit., p. 97.

[2]Better Government Personnel, op. cit., pp. 29-30.

in what are now called obtrusive partisan activities? These questions are yet to be answered. The conclusion of the Commission of Inquiry on Public Service Personnel, though very ably stated, may seem too vague to satisfy some curious minds.

It is the purpose of this chapter to discuss the evolution of the limitations upon political activity of government employees, the present restrictions on political rights of classified civil service employees, the criticisms and demands for the removal of such restrictions, and the results which will likely follow the removal of the present restrictions. The views of political leaders of earlier days regarding the problem of political activity of public servants will also be considered in the hope that a broader perspective may be brought to the discussion.

During the days when appointments to the civil service were made primarily through the channel of patronage, persons who held civil service positions were, almost without exception, at the same time active party workers. Since they were appointed on the basis of political utility, they were naturally expected to render services to the party in the form of contributions or electioneering activity. On the other hand, the expectation of reward, the knowledge that appointment had come because of partisan service, and in many cases the sense of personal or party loyalty to those whom the appointee recognized as responsible for his appointment--all this added to make the office-holder an active participant in the management of his party and in political campaigns. The logical development of this situation was that soon office-holders came to use their official authority to influence elections, interfering with the freedom of the voters, especially that of the subordinate officers; and that a scheme of political assessment was originated, often laying a heavy financial burden upon civil service employees.

The danger of interference with elections by public servants was realized as early as 1801 by President Jefferson. On February 2, 1801, writing to Governor Thomas Mckean, he said: "Interferences with elections . . . . by officers . . . . should be deemed cause of removal; because the constitutional remedy by the elective principle becomes nothing, if it may be smothered by the enormous patronage of the General Government."[1] On July 25,

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[1]The Writings of Thomas Jefferson, ed. by P. L. Ford (New York: G. P. Putnam's Sons, 1896), XV, 194-96.

1801, Albert Gallatin, the secretary of Treasury, sent to the President the draft of a proposed circular to the collectors, in which the following was said:

> Whilst freedom of opinion and freedom of suffrage at public elections are considered by the President as imprescriptible rights, which possessing as citizens, you cannot have lost by becoming public officers, he will regard any exercise of official influence to restrain or control the same rights in others as injurious to that part of the public administration which is confided to your care, and practically destructive of the fundamental principles of a republican constitution.[1]

Because of Jefferson's political strategy, the circular was never sent out.[2] However, in 1802, a similar circular was issued by the heads of the executive departments in which it was said:

> The President of the United States has seen with dissatisfaction officers of the General Government taking, on various occasions, active part in elections of the public functionaries, whether of the General or of the State governments. . . . . The right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice; but it is expected that he will not attempt to influence the votes of others, nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it.[3]

Whether this circular had any effect or not, we have no means of knowing. But it is believed that a mere warning as such this could not have been effective in preventing interferences with elections by public officials.

The first attempt to debar public servants from engaging in electioneering activity, except the right to vote as they pleased, by means of legislation was made in December, 1839. Senator Crittenden introduced a bill in the Senate "to the end that the great powers given to the officers of the Federal Government, and other persons employed in its service, may not be used for the influencing of elections, which ought to be free and

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[1]The Writings of Albert Gallatin, ed. by Henry Adams (New York: G. P. Putnam's Sons, 1896), XV, 194-96.

[2]Carl R. Fish, The Civil Service and the Patronage (New York: Longmans, Green & Co., 1905), p. 44.

[3]J. D. Richardson, A Compilation of Messages and Papers of Presidents (Washington, 1899), X, 98-99.

incorrupt."[1] The bill provided that no person employed in certain classes of positions, such as marshalships, postmasterships, collectorships, etc., should, by word, message, or writing, or in any other manner, "endeavor to persuade any elector to give, or dissuade any elector from giving his vote," at elections, and that no such officer should intermeddle in any of the elections, or use any means with intent to influence or control the same, otherwise than by giving his own vote. Any such officer, if found guilty of violation of the law, would be fined five hundred dollars and become "disabled and incapable of ever bearing or executing any office or place of trust whatsoever under the said United States." If this bill were enacted, civil servants holding positions of the said classes would be prohibited from engaging in partisan activity, with the exception of the right to vote.

This bill was referred to the Committee on Judiciary, which reported on it very unfavorable. The committee objected to the bill on the following grounds. First, the bill, if enacted, would produce an undue discrimination against the described officers, for, while depriving these officers the right to engage in political activity, it would let other officers not belonging to these classes free. Second, "the open, manly independence of thought and liberty of action" of these officers "must soon perish under the parasite embrace of the bill," thus contrary to the fundamental ideas of free government. Third, "the magnitude of this discretionary power committed by this bill to the judiciary" would have the tendency to convert the American form of government into "a judicial despotism, quite as intolerable to a free people, and equally odious as any other." And, finally, if enacted, the law would be unconstitutional, for Congress had no right to intermeddle, by law, in prescribing the qualifications of electors, or the mode of conducting elections of members of the House of Representatives, or electors of President and Vice-President, nor in respect to the privileges or immunities of a citizen of a state; that right belonged exclusively to the states, and was by the constitution withheld from the federal government.[2] The bill was defeated overwhelmingly by vote in the Senate.

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[1] Congressional Globe, 25th Cong. 3d Sess., p. 59; Senate Doc. No. 168, 25th Cong. 3d Sess., p. 11.

[2] Senate Doc. No. 168, 25th Cong. 3d Sess.

After the report of the Committee on the Judiciary on the Crittenden bill, Senator Rives submitted the following resolution:

> Whereas, "the constitutional remedy by the elective principle becomes nothing if it may be smothered by the enormous patronage of the General Government," and whereas, also, "freedom of the election is essential to the mutual independence of the State and Federal Governments, and of the different branches of the same Government so vitally cherished by American institution";
>
> Resolved, therefore, That, in the opinion of the Senate, it is highly "improper for officers, depending on the Executive of the Union, to attempt to control or influence the free exercise of the elective right."
>
> Resolved, also, That measures ought to be adopted by Congress, so far as their constitutional powers may extend, to restrain, by law, all interference of Federal officers with elections, otherwise than by giving their own votes; and that the report of the Judiciary Committe be committed to a select committee, with instruction to new model it according to the principles declared in the foregoing preamble and resolutions.[1]

The proposed resolution was dropped after hours of debate. The basic attack upon restrictions of any kind on political activity of public officers was that public officers were citizens and restrictions on rights of citizens should not be tolerated.

On March 20, 1841 Daniel Webster, the Secretary of State, under the direction of President Harrison, issued a circular, warning federal officers and employees against political activity. It asserted that "partizan interference in popular elections, whether of State officers or officers of this Government," or the payment of contribution or assessment on salaries for party or election purposes by any federal officer or employee would be regarded by the President as cause of removal.

> It is not intended that any officer shall be restrained in the free and proper expression and maintenance of his opinions respecting public men or public measures, or in the exercise, to the fullest degree, of the constitutional right of the suffrage. But persons employed under the Government, and paid for their services out of the public Treasury, are not expected to take an active and officious part in attempts to influence the minds or votes of others, such conduct being deemed inconsistent with the spirit of the Constitution and the duties of public agents acting upon it.[2]

This order was not enforced because President Harrison died and Secretary Webster resigned from his post shortly after

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[1] The Congressional Globe, 25th Cong., 3d Sess., p. 189.

[2] Senate Doc. No. 26, 27th Cong., 1st Sess.

the issuance of the order.

When John Tyler became the President, a number of removals were made on the ground of political activity. In his first annual message to Congress, he said:

> My own conduct in this respect has been governed by a conscientious purpose to exercise the removing power only in cases of unfaithfulness or inability, or in those in which its exercise appeared necessary in order to discountenance and suppress that spirit of active partisanship on the part of holders of office which not only withdraws them from the steady and impartial discharge of their official duties, but exerts an undue and injurious influence over elections and degrades the character of the Government itself.[1]

Therefore, as we have seen, the problem of political activities of public officers had already become a serious matter in the minds of political leaders up to this period. Interference with elections by public servants was considered detrimental to free and incorrupt government and inconsistent with their duties. It was proclaimed that, while the right to cast their votes freely was not to be restrained, they should not take active part in political activity. The payment of political contributions or the levying of assessments on their salaries for political purposes was also condemned. However, because of the strong sentiment for the protection of rights of individuals, efforts made to restrict political activity of civil servants by means of law were without success.

It is highly questionable that such a law, if enacted, could be effectively enforced, in view of the prevailing conditions of party patronage. "To faith must be added good work." Since President Jackson the promise of future activity became a feature of paramount importance in the making of appointments.[2] Failure to keep the promise might be soon followed by removal. Such a fear on the part of office-holders was a powerful force to compell them to undertake partisan activities for the benefit of the appointing party. As President Taft later observed, "When officers are recommended by Senator and Congressmen from political motives and for political services rendered, it is impossible to expect that while in office the appointees will not regard their tenure

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[1] Richardson, Messages and Papers, IV, 88-80.

[2] Fish, op. cit., p. 124.

as more or less dependent upon continued political services for their patrons."[1]

Political assessments are forced contributions paid by office-holders for political purposes. This practice sprang up in the 1830's; by 1842 assessments were vigorously enforced in New York Post Office and Customs House, and the practice became general in the federal service by the time of Buchanan's administration.[2] Since then, all federal employees were regularly levied upon by the party in power in every campaign period. Failure to make "contribution" meant denial of deserved promotion or at worst removal. In order to check this practice, Congress enacted on August 15, 1876, an act providing that

> All executive officers or employees of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employee of the Government, any money or property or other thing of value for political purposes; any such officer or employee, who shall offend against the provisions of this section shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a disdemeanor, and on conviction thereof shall be fined in a sum not exceeding $500.[3]

This is the first legislation against political contributions in the federal service. President Hayes determined to enforce this law, and on June 22, 1877, issued the following executive order:

> No officer should be required or permitted to take part in the management of political organizations, caucuses, conventions, or election campaigns. Their right to vote and to express their views on public questions, either orally or through the press, is not denied, provided it does not interfere with the discharge of their official duties. No assessment for political purposes on officers or subordinates should be allowed.[4]

This is the first executive order since Webster's circular, denouncing partisan activity of civil servants as well as political assessments on their salaries.

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[1] "Patronage in Politics, A Poll of Press," Outlook, C, 723.

[2] Dorman B. Eaton, "Political Assessments," North American Review, CXXXV, No. 312, 205-206.

[3] Stat. L., 169 (1876).

[4] Richardson, Messages and Papers, VII, 450-51; Everett P. Wheeler, Sixty Years of American Life (New York: E. P. Dutton & Co., 1917), p. 266.

After the issuance of this order the newspapers of important cities began to publish lists of the federal office-holders of their localities that held relations with party machines. These lists gave the public a startling revelation of the extent of the mutual relations between office-holders and party machines. The President greatly angered the politicians of his party by issuing this order. They declared that this prohibition was an infringement of personal liberty and rights of citizenship of office-holders. Owing to this opposition, strict enforcement was impossible. Only a few of the subordinate officers were removed on the charges of political activity, and those holding offices in the upper ranks were unmolested.[1]

As far as political assessments were concerned, neither the executive order nor the Act of 1876 had any effect. It will be noted that the Act did not penalize the action of a presidential appointee who might request or demand contributions from his subordinates but only penalized the action of a subordinate in acceding to such a demand. Nor were the federal officers and employees prohibited from making political contributions to persons outside the service under any circumstances. The Senate investigation of 1879 brought out the report that in the campaign for the Congressional election of 1878 the Republican Congressional Committee sent the following letter to every officer and employee of the United States with a salary of $1,000 or more:

> The Committe call with confidence upon you, as a Republican, for such contributions in money as you may be willing to make, hoping that it will not be less than $___
>
> The Committee deem it proper in thus appealing to Republicans generally, to inform those who happen to be in Federal employ that there will be no objection in any official quarter to such voluntary response to this letter and remit at once.[2]

Two other letters were sent out, one as a reminder to those who had not responded, and the other to those who had not paid up. In 1880 similar letters were sent out by the same committee.

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[1]Charles R. Williams, The Life of Rutherfold Birchard Hayes (Boston and New York: Houghton Mifflin Co., 1914), II, 79-80; Harrison Cook Thomas, The Return of the Democratic Party to Power in 1884, Studies in History, Economics and Public Law, Columbia University, LXXXIX, No. 2 (1919), 83.

[2]Senate Report, No. 427, 46th Cong., 1st and 2d Sess., p. 2.

According to an estimation, at least $100,000 was raised in this way.[1] In 1882 the Republican Congressional Committee issued a letter similar to that of the two previous campaigns to all federal employees. The amount proposed to be levied was two percent on the salary, which would bring about $400,000 to the Republican party treasury.[2] Failing to get response the Congressional Committee sent a second letter more importunate than the first, in which it was said:

> Great political battle cannot be won in this way. This Committe cannot hope to succeed in the pending struggle, if those most directly benefited by success are unwilling or neglect to aid in a substantial manner . . . . Unless you think that our grand old party ought not to succeed help it now . . . . It is hoped that by return mail you will send a voluntary contribution equal to 2% of your annual compensation, as a substantial proof of your earnest desire for the success of the Republican party this fall.[3]

The New York Civil Service Reform Association protested that the contributions requested were not voluntary and therefore illegal. However, the Attorney-General gave an opinion that Congressmen were not officers of the United States in the meaning of the statute, and that contributions to the Committee were legal.[4]

In view of the ineffectiveness of the Act of 1876 in preventing political assessments, many bills were introduced in both houses of Congress in 1882 for the purpose of stopping such practice. Many of these bills proposed to prohibit federal employees from making political contributions, whether voluntary or involuntary.[5] It was pointed out that the chief reason for the existence

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[1] Nation, June 22, 1882. See also the June 15 and June 29 issues.

[2] Appleton's Annual Cyclopedia, New Series, VII (1882), 694.

[3] H. C. Thomas, op. cit., p. 86.

[4] Appleton's Annual Cyclopedia, New Series, VII (1882), 694.

[5] One of the bills which sought to prohibit contributions by federal employees for political purposes was introduced by Representative McLane in the House, which provided: "That it shall not be lawful for any person holding any office under the United States to contribute or pay to any committee or person, or into any fund, any money, property, or valuable thing for any political purpose, or give, lend, advance, or pay any money, property, or valuable thing with the intent, or with the assent, permission, or understanding, that the money may be applied to or for any political purpose. No head of a department or other superior officer shall himself collect or permit or allow any other person to

of political assessments was that federal employees were allowed to make so-called voluntary contributions. Hence, it was necessary "to reach the root of the evil." This attempt was met with strong opposition in the Senate. The objection was mainly on the ground that such a law would encroach upon the liberty of public servants as citizens. Senator Hawley, one of the strong opponents of such bills, said during a debate:

> To attempt to forbid any person in the United States, whether an officer, employee, or what not of the Government, or a citizen of any rank or degree, from giving his own money as he pleases, is something that this Senate and this House of Representatives can not do; it is utterly beyond their power. If we were an absolute Despotism, if we were not a government of limited powers, and we should undertake to do it, it would be the duty of every honorable man to resist it. After the employee of the Government or the gardener in one of our own gardens has received his pay for his services it is his to do with as he pleases; and if he, honestly attached to any political party, chooses to subscribe some of it for the expense of a meeting or a banner or a speech or anything of that sort, he has a right to do it.[1]

After much debate, bills which sought to prohibit contributions by federal employees to any person for any political purpose, were defeated, and the one introduced by Senator Hawley, which constituted Sections 11 to 15 inclusive of the Civil Service Act, was incorporated in the Pendleton bill and enacted.

The last five sections of the Civil Service Act were embodied in the Criminal Code in 1910,[2] and remain the whole of the federal law dealing with the matter of political contributions today. By these provisions, any officer of the United States, legislative, executive or judicial (except the President), is prohibited from soliciting or receiving a contribution or giving a contribution to any other officer or employee of the United States for any purpose. Violation of this prohibition is punishable by a fine

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collect or receive from any officer in his department under his supervision, or from any other officer whatsoever, any assessment, percentage, contribution, gift, loan, or advance of money, property, or valuable thing with the intent, understanding, or permission that the same shall or may be used for any political purpose." See Congressional Record, 47th Cong., 1st Sess., p. 4857. A similar bill was introduced in the Senate by Senator Beck. See Congressional Record, 47th Cong., 2d Sess., p. 624.

[1] Congressional Record, ibid., p. 621.

[2] Sections 118 to 122 inclusive of the Criminal Code.

of $5,000 or by imprisionment for a term not exceeding three years.[1] It aslo provided that: ". . . . no officer or employee of the United States mentioned in the act shall discharge or promote or degrade or in any manner change the official rank or compensation of any other officer or employee, nor promise or threaten so to do for giving or withholding or neglecting to make any contribution of money or any other valuable thing for any political purpose."[2] It is, however, permissible to make political contributions to persons not in the service of the United States.

By Sections 2 and 4 of the Act, the Civil Service Commission is given authority to investigate all cases of political contributions levied or given in violation of the Act. The enforcement of the law has done much to put a stop to the levying of political assessments. But it is by no means true that the practice has been completely eliminated.[3] For the purpose of making this prohibition more effective, the Commission has proposed several times to Congress a statute which would prohibit the solicitation of political contribution from an officer or employee in the government by any person whatsoever, but the recommendation has never received any consideration from Congress.[4]

With few exceptions, civil service laws in other jurisdictions have similar provisions prohibiting solicitation of political contributions in the service. In many cases the enforcement of these provisions has met with great difficulties and the provisions have become practically nullified.

While the matter of political contributions or assessments was a subject of much controversial debate preceding the passage of the Pendleton Act, political activity of civil servants in other forms did not receive much attention since the executive order of

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[1]Section 15, the Civil Service Act. [2]Section 13, ibid.,

[3]See V. O. Key, "The Technique of Political Graft in the United States" (Unpublished Ph.D. Dissertation, Department of Political Science, University of Chicago, 1934), pp. 68-75; Hearings before a Subcommittee of the Committee on Post Offices and Post Roads, United States Senate, 70th Cong., 2d Sess.; James K. Pollock, Party Campaign Funds (New York: A. A. Knopf, 1926), pp. 114-117; William D. Foulke, Fighting the Spoilsmen (New York: G. P. Putnam's Sons, 1919).

[4]Lewis Mayers, The Federal Service (New York: D. Appleton & Co., 1922), p. 160.

President Hayes on June 22, 1877. The latter problem was, indeed, overshadowed by assessments on office-holders for campaign purposes, which had attracted even more attention than inefficiency in the service or party patronage in the making of appointments.[1]

The Civil Service Act does not prohibit the general political activity of civil servants beyond declaring that no person in the service has the right to use his official influence or authority to coerce political action of any other.[2] Rule I of the Civil Service Rules provided that "No person in the said service shall use his official authority or influence either to coerce the political action of any person or body or to interfere with any election."[3] This rule remained substantially unchanged until 1907. The Commission had no authority to take any action relative to the political conduct of a civil servant unless it was charged that he had violated either the Civil Service Act or the rule. The political conduct of federal employees not falling within these provisions was a matter wholly for the consideration of the appointing power, in which the Commission could not interfere. Moreover, the terms of these provisions were so vague that only gross forms of their violations could be proved. The Civil Service Commission was therefore in no position to govern civil servants so far as their participation in politics was concerned.

On July 14, 1886, President Cleveland issued an executive order warning office-holders against political activity. He declared that office-holders were servants of the people, and not their masters, and that they should, in their political action as well as in the discharge of their official duties, avoid offending the people by a display of "obtrusive partisanship." And, also: "A just discrimination in this regard between things a citizen may properly do and the purposes for which a public office should not be used is easy in the light of a correct appreciation of the relation between the people and those intrusted with official place and a consideration of the necessity under our form of government of political action free from official coercion."[4]

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[1]Thomas, op. cit., p. 82. [2]Section 2, Part 2, Sub. 6.

[3]Rule I, Civil Service Rules, The First Annual Report of the United States Civil Service Commission (June, 1884), p. 45.

[4]Richardson, op. cit., VIII, 494-495.

In pursuance of this order President Cleveland removed during the Congressional campaign of the fall of 1886 two district attorneys, on charges of making campaign speeches. M. E. Benton, a Democrat, appealed to the President shortly after the election and was reinstated. W. A. Stone, a Republican, did the same but failed to secure the reinstatement. The refusal was based on the grounds that Stone had been extremely partisan in 1884 and had been retained only on a promise to refrain from such a partisan course. However, facts seem to indicate that neither Benton nor Stone had made violent partisan speeches, and Cleveland had earlier expressed that he would not "regard a temperate and decent political speech made by an official to his neighbors objectionable."[1] It is, therefore, evident that Cleveland had treated the Republican more harshly than the Democrat. He was also charged of having dismissed Republican officials in vast numbers on secret charges of offensive partisanship without giving them opportunity for defense or denial.[2]

Hence, by treating the officials partially and with evident party bias, President Cleveland defeated his own intentions in issuing the executive order. There was no authoritatively construed rule as to what was proper political activity and what was obtrusive partisanship. Furthermore, the order applied generally to all office-holders, and by attempting to apply it equally to classified and unclassified positions, it was soon found impossible to enforce it adequately. All this led to a paragraph in an annual report of the Civil Service Commission, which was drawn up by President Roosevelt when he was a commissioner. It reads as follows:

> As a matter of fact no rule about what is proper partisanship in the classified service has even been authoritatively construed, and the Commission has no power whatever to construe such a rule. The Commission feels strongly that whatever rule is adopted should apply equally to adherents of all parties . . . . A man in the classified service has an entire right to vote as he pleases, and to express privately his opinions on all political subjects; but he should not take any active part in

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[1] Richardson, op. cit., VIII, 494-495.

[2] A. B. Sageser, The First Two Decades of the Pendleton Act, A Study of Civil Service Reform (The University Studies of the University of Nebraska, 1935), p. 121; H. C. Thomas, op. cit., p. 243; Report of the Council, Proceedings of the Annual Meeting of the Civil Service Reform League, 1907, p. 46.

> political management or in political campaigns, for precisely the same reasons that a judge, any army officer, a regular soldier, or a policeman is debarred from taking such an active part. It is no hardship to a man to require this. It leaves him free to vote, think, and speak privately as he chooses, but it prevents him, while in the service of the whole public, from turning his official position to the benefit of one of the parties in which the whole public is divided; and in no other way can this be prevented.[1]

This passage paved the path for the establishment of the rule governing political activity of classified civil servants today. It is the first formal announcement which set forth the rule of game for a non-political civil servant in the world of political conflict and brought out the underlying idea of non-partisanship of the permanent civil service. It was recognized that a person in the classified civil service which is by nature non-political should avoid being entangled in party competitions. He, while free to vote and to express privately his opinions on all political matters, must refrain from taking an active part in politics, and only by so doing, he could be in the position to serve faithfully the whole public. This point was further explained in Roosevelt's Autobiography, in which he said: "We ought to make it clear as a bell that the business of serving the people in one of the ordinary ministerial Government positions, which having nothing to do with deciding the policy of the Government, should have no necessary connection with the management of primaries, of caucuses, and of nominating conventions."[2]

It was also realized that persons outside the classified service, who were appointed mainly on the basis of political affiliations, and those inside the classified service could not be treated alike. President Taft was not the first to recognize the fact that it was impossible to expect those who were appointed for political reasons to discontinue partisan activity. Hence, Roosevelt recommended that they be treated on a different basis. However, by stressing the necessity of a separate treatment for the unclassified positions, he did not mean that officers holding those positions could indulge in partisan activity without limit. Later,

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[1] The Eleventh Annual Report of the United States Civil Service Commission (June, 1894), pp. 20-21.

[2] Theodore Roosevelt, An Autobiography (New York: C. Scribner's Sons, 1920), p. 133.

in his letter to the Civil Service Commission, dated June, 1902, he further elucidated his view of making a sharp line between the activity allowed to public servants within the classified service and that to those without the classified service, and he set forth the limit to which the unclassified officers could go in taking part in politics. He said:

> I seemed to me at the time, and I still think, that the line thus drawn was wise and proper. After my experience under two Presidents,--one of my own faith and one not--I had become convinced that it was undesirable and impossible to lay down a rule for public officers not in the classified service which should limit their political activity as strictly as we could rightly and properly limit the activity of those in whose choice and retention the element of political considerations did not enter; and afterwards I became convinced that in its actual construction, if there was any pretence of applying it, it inevitably worked unevenly, ... Office-holders must not neglect their public duties, must not cause public scandal by their authority, but outside of the classified service, the effort to go farther than this had failed so signally when the Eleventh Report . . . . was written, and its unwisdom has been so thoroughly demonstrated, that I felt it necessary to try to draw the distinction therein indicated.[1]

Thus, according to Roosevelt, while officers in the classified service must not take "an active part in political management or in political campaigns," those in the unclassified service "must not use their offices to control political movements, must not neglect their public duties, must not cause public scandal by their authority." It was hoped to make the enforcement of the restrictions easier by making such a distinction.

No action was taken upon Roosevelt's view until 1902, after he became the President. In that year, the Civil Service Commission recommended to the President that either a general executive order be issued, or a recommendation be made to the heads of departments for the establishment of regulations to carry out the view he had previously expressed on the subject. In the letter of June 13, 1902, which was written in reply to the Commission, President Roosevelt stated that the executive order of President Cleveland was regarded as still in effect and that this order and his views were to be enforced. The Postmaster-General, complying with the wish of the President, issued on October 1, 1902, an order to officers and employees of the Post Office Department announcing that "A person in the classified service has an entire right to vote as

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[1] Twentieth Annual Report of the United States Civil Service Commission (June, 1903), pp. 125-26.

he pleases, and to express privately his opinions on all political subjects, but he should not take an active part in political management or in political campaigns."[1] The Attorney-General also addressed a letter to all officers and employees of the Department of Justice on September 18, 1902, in which the following was said:

> The spirit of the civil service law and rules renders it highly undesirable for Federal officers and employees to take an active part in political conventions or in the direction of other parts of political machinery. Persons in the Government service under this Department should not act as chairmen of political organizations, nor make themselves unduely prominent in local political matters.[2]

Instructions along the same lines as the above were issued by other executive departments and independent offices.

Since 1902 the difficulty in the enforcement of the rule against political activity of public servants lied in the fact that it had to be enforced by the heads of different departments and not by a central body like the Civil Service Commission. The degree of enforcement depended upon the attitude of the head of the department on the question. There was, therefore, no uniformity in the action taken in the various cases that arose. The adherents of the party in power were often allowed to take a part in politics which was not allowed to the adherents of the party out of power. Employees in some departments were permitted greater lattitude in political activity than those in other departments.[3]

In order to remedy this situation, President Roosevelt on June 3, 1907 promulgated an order for an amendment to Section I of Rule I of the Civil Service Rules by adding the following paragraph: "Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they pleased and to express their opinions on all political subjects, shall take no active part in political management or in

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[1] Twentieth Annual Report of the United States Civil Service Commission (June, 1903), p. 126.

[2] Ibid., p. 126

[3] Good Government, XXIV, No. 7 (1907) 54; William D. Foulke, "Restrictions of Political Activity of Office-holders," Proceedings of the National Civil Service Reform League (1907), pp. 112-128; Twenty-fourth Annual Report of the U. S. Civil Service Commission (1907), pp. 8-9.

political campaigns."[1]

The wording was not nes. The importance of this order lies in the fact that the regulation of political activity was hereby made a civil service rule, thus giving the Commission power to investigate all cases of political activity by members of the classified service. This provision has remained unchanged until today.

From the beginning, the motive for the limitation of political activity of public servants has been to prevent the danger of their interference with elections. Such interference was considered to be injurious to the free institutions. This appears also to have been in President Roosevelt's mind. He wrote in his Autobiography that "There are still masses of office-holders who can be used by an unscrupulous Administration to debauch political conventions and fraudulently overcome public sentiment."[2] However, beyond this, he fully realized the importance of non-partisanship of the permanent civil service. He set forth the principle that those who hold ministerial positions, having no power in deciding major policies of the government, should take no active part in politics. To the reformers, partisanship of civil servants was a necessary part of the spoils system, and in order to eliminate party patronage or to prevent its revival, it was necessary to prohibit political activity.[3] It was these forces that brought about the rule relating to political activity in the federal ser

Similar provision is found in the civil service laws or rules of some states and cities. Rule VI, Section 3, Sub. 10 of the rules of the State civil service commission of Illinois provides that any person in the classified service shall be removed or suspended if;

> he has been elected or sought an election as an officer of a political club or organization, or has acted as a worker at the polls or engaged in the distribution of badges, posters, bills, or printed or written matter approving, favoring or opposing a candidate for election to a political office, fed eral, state, county, or municipal, or who has been concerned in the collection or distribution of money for a political purpose, or has been nominated or sought nomination as a candidate for election to a public office, or has been recommended

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[1] Ibid., p. 9. [2] Theodore Roosevelt, op. cit., p. 131.

[3] Foulke, op. cit., pp. 112-115.

> to the Governor or other appointing officer himself or another person for appointment to public office without being requested by the Governor or such appointing officer to make a recommendation.[1]

The civil service law of Ohio provides that no person in the classivied service shall be "an officer in any political organization or take part in politics other than to vote as he pleases, and to express privately his political opinions."[2] Rule VII, Section 8 of the rules of the Civil Service Department of the city of Los Angeles, California provides that:

> Participation of employees in the classified civil service in partisan politics, except to vote, is contrary to the spirit of the Charter and subversive of the best interests of civil service. And such participation is hereby strictly prohibited. The violation of this rule by a civil service employee shall be sufficient ground for his removal.[3]

The so-called Shern Act of Pennsylvania, enacted on February 15, 1906, prohibits employees of cities of the first class from taking active part in politics. Its provisions are broader and more detailed.

> No officer, clerk or employee of any city of the first class, or of any department, trust or commission thereof, shall be a member of, or delegate or alternate to, any political convention except in the performance of his official duties . . . . shall serve as a member of, or attend the meetings of, any committee of any political party, or take an active part in political management or in political campaigns, or use his office to influence political movements, or influence the political action of any other officer, clerk or employee . . . . shall in any way or manner interfere with the conduct of any election, of the preparation thereof, at the polling place, or with the election officers while counting the vote or returning the ballot boxes, books and papers to the place provided by the law for that purpose, save only for the purpose of marking and depositing his ballot as speedily as it reasonably can be done; . . . . violating any of the provisions of this section shall be immediately dismissed by the Mayor, or by the head of the department, trust or commission in which he is employed.[4]

Pursuant to its general power to "make investigations and

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[1] Rules of the State Civil Service Commission, State of Illinois (December 15, 1915), p. 28.

[2] Section 486-23, G. C.

[3] Seventh Annual Report of the Civil Service Department, Los Angeles, California (November, 1909), p. 99.

[4] Purdon's Pennsylvania Statutes Annotated (1931), Title 53, sec. 3343.

report upon all matters touching the enforcement and effect of said rules," the United States Civil Service Commission, since 1907, has investigated hundreds of cases of political activity. The Commission has given the phrase "active part in political management or in political campaigns" a very wide meaning. One may well ask to what extent is a person in the federal classified service free to exercise political rights as a citizen, or in other words, what is regarded as obtrusive partisanship and what is deemed proper political activity that he may undertake. This will be discussed under the following topics.

Voting

Rule I of the United States Civil Service Rules expressly reserves the right to vote to the classified civil service employees. In no other jurisdiction is a civil servant prohibited from voting. In some localities, because of the strong influence of the party machines, public employees are often unable to cast their votes freely as they please.[1] There is also fear that, with the increase in the number of public employees, and if they become more and more aware of their collective interests, the danger of bureaucratic control might become imminent.[2] In England, the threat presented by dockyard workers and postal officials became strong enough to constitute a problem, and it was proposed as the way out to disfranchise them. However, neither in England nor in this country, is the disfranchisement of public employees likely to be effected.[3]

Expression of Opinions

The right of a civil servant to express privately his opinions on all political subjects is not constrained by the rule. But

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[1]For instance, during April, 1935, election in Chicago, forms were mailed by the Democratic organization to all county employees, with instruction to vote for the candidates designated and to report in their precincts, with the intimation that they would be judged by their performance of this order. See the United Citizens Beacon, February, 1936, p. 4.

[2]Minutes of Evidence, Commission of Inquiry on Public Service Personnel, p. 139.

[3]Herman Finer, "The Civil Service and the Modern State," Public Administration, VII, 336.

he must confine himself to private expression of his views and must refrain from political discussions or conferences while on duty or in public places. He may not write for publication or publish any letter or article in favor of or against any political party, candidate or measure. Nor may he be connected "editorially, managerially, or financially with any political newspaper."[1]

Making of Political Contributions

As has been pointed out above, under the civil service law, a civil service employee is prohibited from soliciting or receiving a contribution from or giving a contribution to any other officer or employee of the United States for any political purpose. However, he has the right to make political contributions to any organization or person not in the service of the United States. In view of the existence of the practice of levying forced contributions upon civil service employees under the existing law, it has been proposed to prohibit them from making contribution to any person for any political purpose. This measure is undoubtedly too drastic.

Membership in Political Clubs

Classified civil servants may be members of political clubs, but they are not allowed to be officers, committee members, or delegates or representatives to other organizations. The Commission asserts that "it is improper for them to be active in the organization of such a club, to be officers of the club, or members or officers of any of its committees or act as such, or to address a political club."[2]

Participation in Political Management.

A civil servant is forbidden to be a candidate or to render service as delegate, alternate, or proxy in any political convention, or to be an officer or employee of the same. This rule

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[1] United States Civil Service Commission, Information concerning Political Assessment and Political Activity, Form 1236 (October, 1926), p. 7. This will be referred to later simply as Information.

[2] Ibid.

does not prohibit mere attendance as a spectator, but he must not take any part in the convention or in the deliberations or proceedings of any of its committees. He may attend a primary meeting, mass convention, beat convention, caucus, and may cast his vote on any question presented, but he may not act as an officer of it, or address it, make motions, prepare or assist in preparing resolutions, assume to represent others, or take any prominent part in it. Service on or for any political committee is prohibited. He is also prohibited from preparing for, organizing, or conducting a political meeting or rally. He may not address such a meeting and may not take an active part in it, except as a spectator.[1]

Participation in Political Campaigns and and Electioneering Activities

A civil servant must not engage in the distribution of campaign literature, badges or buttons, or the circulation of political petitions (including initiative and referendum, recall, and nominating petitions), and he must not wear campaign badges or buttons.[2] He is prohibited from taking any offensive activity at primary and regular elections, soliciting votes, assisting voters to mark ballots, getting out the voters on registration and election days, acting as the accredited checkers, or challenger of any party or faction, assisting in counting the vote, or any other activity at the polls. He is forbidden to render service for pay, such as transporting voters to and from the polls and candidates on canvassing tours, even though such service is rendered without regard to political party. He is not allowed to act as an election officer, except in cases where refusal to so act would be penalized by the election law of the state. In the later case, he must not exhibit partisan feelings or give any appearance of partisan activity.[3]

Candidacy for or Holding Elective Offices

The constitution of the United States forbids candidature for the legislative branch of the government.[4] Besides this

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[1] Information, p. 7. [2] Ibid., p. 11. [3] Ibid., p. 7.

[4] Article I, Section 7 of the constitution provides that:

constitutional prohibition, the Civil Service Commission has interpreted that the rule relating to political activity forbids candidacy for a nomination or for election to any national, state, county, or municipal office. Not only formal announcement but also preliminaries leading to such announcement, such as canvassing or soliciting support and anything done in furthering the candidacy, are prohibited. Furthermore, the rule does not allow a candidacy which is passive; and if a civil servant acquiesces in the efforts of his friends in furthering such candidacy and does nothing to prevent them the rule is violated.[1]

The actual holding of local office, whether elective or appointive, is prohibited by executive order of January 17, 1873, which is applicable to all federal employees, including presidential appointees and laborers. However, exceptions have been made by this order, by a supplementary order issued January 28, 1873, and by subsequent executive orders, making it permissible for federal employees to hold certain excepted offices.[2] The Civil Service Commission has no function in the interpretation or enforcement of these orders, except in so far as they relate to the rule limiting political activity of classified civil service employees and unclassified laborers. The provisions of these orders, permitting the holding of certain local offices, does not relieve a classified civil servant from the necessity of obeying the rule relating to political activity. The only difference is, according to the Commission, that candidacy for or holding such an office is not alone sufficient to constitute a violation of the rule, while it is sufficient in the candidacy for or holding other offices. If a classified employee by becoming a passive or inactive candidate secures election to one of the excepted offices under the executive orders, he does not violate the rule. However, if candidacy

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"No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been enacted, or the emolutions whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office."

[1] Information, pp. 9-10.

[2] For provisions of these orders see Lewis Mayers, op. cit., pp. 162-163; Information, pp. 8-10; U. S. Civil Service Commission, Supplement to Form 1236 (August 8, 1932).

to an office, whether or not one of the excepted offices, necessitates, or is involved in, political campaign, such candidacy is prohibited by the rule.[1]

In certain localities where the residents are predominantly classified employees or unclassified laborers, exceptions have been made to permit them to participate in local elections. The executive order of May 14, 1909 provides that:

> Whenever in the opinion of the Secretary of the Navy or the Secretary of War a strict enforcement of the provisions of Section I, Rule I, of the civil service rules would influence the results of a local election the issue of which materially affects the local welfare of the Government employees in the vicinity of any naval yard or station or of any arsenal or other military establishment, the Civil Service Commission may, on recommendation of the Secretary of the Navy or the Secretary of War, and after such investigation as it may deem necessary, permit the active participation of the employees of the yard, station, arsenal or other military establishment in such local election. In the exercise of the privilege which may be conferred hereunder, persons affected must not neglect their duties nor cause public scandal by their activity.[2]

The same privilege has been granted to civil servants residing in incorporated municipalities adjacent to the District of Columbia.[3]

Outside of these exceptions, a classified employee is prohibited from being a candidate for election to any national, state, county, or municipal office. If he desires to be a candidate for elective office, he has to resign the civil service position before he engages in any activity for the furtherance of such purpose. However, he has the right to seek reinstatement within the eligibility period afterwards. This is made possible by a letter of the President dated December 26, 1911, in which it was said:

> I am of opinion that, in accord with the spirit of our institutions in recognizing the fundamental right of citizenship, a citizen who resigns to become a candidate for office and pursues a course free from coercion, bribery, or unlawful conduct should not thereby be prejudiced by being refused reinstatement within the period of eligibility prescribed by the rule.[4]

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[1] Information, p. 9.

[2] Quoted by the U. S. Civil Service Commission, Information, p. 9.

[3] For provisions see Information, p. 10; Supplement to Form 1236; Civil Service Act, Rules, Statutes, Executive Orders and Regulations (June 1935), p. 12.

[4] Quoted in Information, p. 11.

Complying with this recommendation of the President, the Civil Service Commission states that if one resigns not merely to escape punishment for political activity prior to resignation, without delinquency or misconduct, and is guilty of no scandalous or unlawful conduct in his activity after his resignation, his reinstatement may be authorized.[1]

The rule applies not only to the action of federal employees themselves but also to that of agents, including wives or husbands. The Civil Service Commission has given warning that "Employees are accountable for political activity by persons other than themselves, including wives and husbands, if, in fact, the employees are thus accomplishing by collusion and indirection what they may not lawfully do directly and openly."[2]

Thus, as we have seen, the rule limiting political activity of federal employees has been interpreted quite broadly. To recapitulate, the forms of political activity which are not prohibited are: (1) the right to vote as they please; (2) the right to express privately opinions on political subjects; (3) making of political contributions to any committee, organization or person not employed by the United States; (4) membership in political clubs, provided they are not officers or employees of the same; (5) attendance as spectators at conventions, primary meetings, caucuses, and similar occasions; and (6) participation in local elections in certain excepted localities. While members of the classified service are free to take part in these activities, they are obliged to refrain from others which are deemed improper or obtrusive.

The rule, thus interpreted, has been enforced rather vigorously by the Civil Service Commission. The number of offenses with punishments from 1913 to 1933 will be seen in the table on the next page. It does not mean that the number of offenses in any of the years constitutes the total cases of violations of that year. Indeed, it is safe to say that the numbers which ought to be tried and found guilty are vastly beyond these figures, especially in the presidential years.[3]

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[1] Ibid., p. 12.

[2] Ibid., p. 5; see also Supplement to Form 1236, op. cit.

[3] Such is the comment of Dr. Herman Finer; see his article "The Civil Service and the Modern State," op. cit., p. 341.

TABLE 1

VIOLATIONS OF THE RULE RELATING TO POLITICAL ACTIVITY FROM 1913 TO 1933*

Year	Removal or separation	Suspension or reduction of salary	Reprimand or warning	Required to withdraw from candidacy	Required to discontinue activity	Total
1913	16	14	29			59
1914	24	8	27			59
1915	64	31	56			151
1916	27	18	40			85
1917	33	28	44			105
1918	11	3	15			29
1919	7	4	23			34
1920	4		20	3		27
1921	4	2	22	1		29
1922	38		68			106
1923	28		86			112
1924		1	47			48
1925	6	7	53			66
1926	7	5	42			54
1927	8	3	65			76
1928	14	16	71			101
1929	6	11	60	19	4	100
1930	7	8	33	11	7	66
1931	5	17	38	7	2	69
1932	3	9	35	9	1	57
1933	6	14	69	13	1	103
Total	318	199	941	63	15	1536

*These figures are gathered from the annual reports of the Civil Service Commission of the same period. Cases of political activity investigated by the Civil Service Commission from 1933 to 1934 numbered 520. See the Fifty-first Annual Report (1934), p. 13.

The law or rule against political activity of civil servants in many other jurisdictions has not been enforced as consistently as that in the federal service. In some cases, no attempt has been made to enforce the rule at all. One fails to find in the annual reports of civil service commissions in these jurisdictions any statement as to the number of violations of the rule or law.

The restrictions on political rights of civil service employees have been a subject of much criticism. There have been demands for the removal of these restrictions. Before we consider

this, we shall discuss the issue that has arisen out of the limitations on political activity in the British civil service.

In the British civil service the traditional custom concerning political activity is that "employees of the established Civil Service should take no overt part in the public political affairs." There is an unwritten but general rule that "they must maintain a reserve in political matters and not put themselves forward prominently on one side or the other."[1] There are departmental rules forbiding civil servants to serve on election committees, to support or oppose, by public speaking or writing, any particular party or candidate. The most detailed regulations are perhaps those of the Post Office, which are as follows:

> (i) A servant of the Department may not serve on a committee having for its object to promote or prevent the return of a particular candidate to Parliament.
>
> (ii) He may not support or oppose any particular candidate or party either by public speaking or writing.
>
> (iii) A notice soliciting votes for any particular candidate may not be exhibited either within or without any Post Office or other building under the control of the Department, and within such buildings a memorial or address with a political party object may not lie for signature or be exhibited.
>
> (iv) Postmen and other Officers of the Department are forbidden when in uniform to take part in any demonstration of a party or political character.
>
> (v) The rule dealing with the political activities of Post Office servants are not regarded as necessarily precluding them from undertaking canvassing work at election times when they are not on duty and are not in uniform. It is, however, obvious that in the case of certain of the more responsible grades active canvassing would be incompatible with their official position, and whilst the Postmaster-General prefers for the moment to leave this question to the discretion and good sense of the staff, he must reserve to himself the right to specify certain grades the members of which could not be allowed to undertake political canvassing.[2]

The rule relating to candidature for Parliament was embodied in the Order in Council of 1910, which provides that "Any officer seeking a seat in the House of Commons shall resign his office as soon as he issues his address to the electors or in any manner publicly announces himself as a candidate."[3] This rule was

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[1]Herman Finer, The British Civil Service, An Introductory Essay (London: 1927), p. 75; Committee on Parliamentary, Etc., Candidature of Crown Servants, Cmd. 2408 (1925), pp. 3, 8.

[2]Quoted in Candidature of Crown Servants, Cmd. 2408, p. 9.

[3]Clause 16, Order in Council, Jan. 10, 1910, Robert Moses, op. cit., Appendix, p. 276.

first supported by the Treasury declaration made in 1884, in which it was said that a public injury would be caused by ". . . . any departure from the conditions which, under Parliamentary Government, render a Permanent Civil Service possible, and . . . . among those conditions, the essential one is that members of such a service should remain free to serve the Government of the day, without necessarily exposing themselves to public charges of inconsistency or insincerity."[1]

Candidature for county councils and other local elective offices, which was forbidden, was since 1909 left to the discretion of the heads of departments in particular cases, "provided that the duties involved did not conflict with the personal performance of the officer's duties to his department."[2]

Because of the efficient party organization which makes civil servant canvassers unnecessary and the well entrenched tradition of neutrality of the permanent civil service, rules restricting political activity of civil servants are not as strict as that provided in the United States Civil Service rule and interpreted by the Commission. However, these rules are sufficient to prevent active participation in politics. Those who aspire to an alternative career, in this case a political one, find it no easier than do the American civil servants.

The British civil servants, especially subordinates, have repeatedly claimed for a greater liberty in political activity. The MacDonnel Commission of 1910-1914 was faced with this demand. It was contended that members of the civil service should be permitted to stand for Parliament and all other local councils, and if elected, to participate in the deliberations of those assemblies without interference. It was also urged that apart from actual candidature much greater freedom should be granted to civil services to promote the candidature of others, by speaking at political meetings, by writing and canvassing. Although admitting that such action might be unseemly on the part of the officers holding higher administrative positions, it was urged that for civil service in the lower ranks, such greater freedom would do no harm, and was desirable "in order to realize the full powers and responsibilities

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[1]Quoted in Candidature of Crown Servants, op. cit., p. 7.

[2]Herman Finer, op. cit., p. 75; ibid., p. 8.

of a complete citizenship."[1] Speaking through Charles George Ammon, Parliamentary secretary of the National Joint Committee of Postal and Telegraph Associations, these claims were made mainly on the grounds that the English civil servants had been well "grounded in the traditions and honour of the Civil Service"; that in view of the marked improvement in education and the appreciation of their responsibilities as citizens, they could be trusted with "absolute freedom of voice and influence"; and that, having the impartial body to set up open competitive examinations for recruitment, there would be no danger of an officer "staffing his office with men of his own political bias."[2] However, the Royal Commission refused to admit the acceptability of these claims and asserted that the greater freedom of civil servants in political activity would inevitably destroy the well-merited tradition of neutrality.[3]

Having not been satisfied with their claims, civil servants continued to demand a greater liberty in political activity. The Civil Service Joint Committee which represented all the staff organizations affiliated to the staff side of the Civil Service National Whitley Council, presented a list of concrete demands to a Treasury Committee, organized in 1924 for the purpose of inquiring into the existing regulations governing the candidature of civil servants for Parliament and other local bodies. Of these demands, the important ones were as follows:

(a) Civil servants in general in the future should be under no disability in regard to the public expression of their political opinions, except in so far as restrictions are imposed upon all by the Official Secret Acts of 1911 and 1920.

(b) Civil servants should not be prevented by official regulations from standing as candidates for elections to the House of Commons.

It was also demanded that special leaves should be granted to civil servants who became Parliamentary candidates or representatives to the House of Commissions and to other local government

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[1] Fourth Report of the Royal Commission on the Civil Service, Cmd. 7338 (1914), p. 96.

[2] Third Report, the Royal Commission on the Civil Service, Cmd. 6739 (1913), pp. 130-140.

[3] Supra.

bodies. The existing restrictions on political activity of civil servants were, it was asserted, unnecessary, and members of the civil service were entitled and in duty bound to take "as keen an interest and as controversial a part in partisan politics as any other citizen." It was also asserted that, while civil servants, in so doing, would be expected to hold and be influenced by political views which would often be at direct variance with the policy they were administering, this would not impair their loyalty in administering that policy, and in place of the existing restrictions "all that was required was a code of professional discretion such as that expected of barriers and solicitors." They insisted that "the professional ethic" would impress on the individual the undesirablilty of taking public action which might prejudice his professional work.[1]

After a careful inquiry, the Treasury Committee reported on the question in 1925. It stated that "The question from the point of view of the State becomes not one of 'civil rights' but one of administrative efficiency."[2] The most essential point in the Committee's conclusion is as follows:

> The constantly disposition of Parliament to entrust the exercise of quasi-judicial duties to executive departments without providing any of the established safeguards operative against judicial excess . . . . such as publicity, right of audience to parties affected, statement of reasons for judgment, right of appeal and the like . . . . as well as the sharper alignment of political parties in these days, unite to make the higher reputation for political impartiality hitherto enjoyed by the public service a more valuable national possession than ever before. We can feel no doubt that the confidence universally held in the existence of such impartiality is a most valuable guarantee for its continuance, and we can have no assurance that the existing ethic of the service would long survive that confidence if it were once lost.[3]

The Committee pointed out that the danger of "politicalization" of the civil service was too great to permit the removal of the restrictions on political activity; and hence it rejected the demands of the Civil Service Joint Committee and other organizations of civil servants. Some of the members of the Treasury Committee, however, suggested that certain exceptions might be made. They believed that the grant of the concession, such as demanded, to the lowest classes, that is, the Manipulative Grades and

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[1] Candidature of Crown Servants, op. cit., pp. 14-15.

[2] Ibid., p. 25.

[3] Ibid., p. 26.

Messengers, Charwomen, etc., would not involve any of the danger to the public service which they agreed would inevitably follow its grant to higher grades. They pointed out that, speaking generally, a member of one of the groups above mentioned, who wished to stand for Parliament, should be permitted to do so, it being understood that, if elected, he or she must resign from the service with the loss of pension rights and without expectation of reinstatement. They recognized also that the general permission must be subjected to reservation. For example, no political work should be done in uniform, and, no system of indefinite or prolonged leave of absense for political purposes even without pay should be permitted.[1]

The position of the state relating to political activity of civil servants which was expressed in the report of the MacDonnel Commission and the report of the Treasury Committee of 1925 is reaffirmed and somewhat strengthened by the report of the Board of Enquiry appointed by the Prime Minister to investigate the Gregory case in 1928, in which the following declaration was made:

> . . . . there are spheres of activity legitimately open to the ordinary citizen in which the Civil Servant can play no part, or only a limited part. He is not to indulge in political or party controversy, lest by so doing he should appear no longer the disinterested adviser of Ministers or able impartially to execute their policy. He is bound to maintain a proper reticence in discussing public affairs and more particularly those with which his own Department is concerned.[2]

The view of the British government concerning political activity of its servants is, therefore, clear. It stresses the distinction between an ordinary citizen and a public servant, and upon the latter certain restrictions should be imposed in the exercise of rights of citizenship. The complete fulfilment of the official duties and responsibilities of a civil servant makes such restraints necessary. By far the more important point is, as it has held, that the complete liberty of civil servants in political activity would inevitably impair and destroy the tradition of the civil service neutrality. Hence, the problem of whether civil servants should be given a greater freedom of political activity

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[1] Ibid., pp. 28-31.

[2] Report of the Board of Enquiry appointed by the Prime Minister to investigate certain Statements affecting Civil Servants, Cmd. 3037,(1928), pp. 21-22.

should be weighed with that of the maintenance of the doctrine of neutrality.

The rules of the United States Civil Service Commission restricting political activity of members of the classified service was first denounced by an educator rather than a civil servant. Flavel S. Luther, the president of Trinity College, in an address delivered at the annual meeting of the National Civil Service Reform League, said:

> I think it not a wise thing to exclude from political activity this large class of men who have exhibited conspicuous fitness for decent citizenship by passing your examinations. Such a course cuts out the best, not the worst, from the councils of the nation over its affairs.

According to him, civil servants should be left absolutely free to take part in all legitimate political activity. They should be encouraged to act in politics as any other citizen. He thus set forth the disbelief of probably a great many in the wisdom and justification of restricting political activity of public servants. This view was vehemently refuted by the reformers, pointing out that president Luther, in setting forth his belief, unconsciously assumed an ideal government and people, and that restrictions were essential under existing political conditions, to secure the very "conspicuous fitness for decent citizenship."[1]

The protest of civil servants against the restrictions on their political rights was first registered in December, 1916, in the Federal Employee, the official journal of the National Federation of Federal Employees, an organization of members of the federal civil service. The Civil Service Rule concerning political activity was bitterly denounced. The Federal Employee said:

> . . . . the worst feature now prevailing is the fact that there is a constant inclination to deprive civil service employees of every attribute of freedom and incorporate a system of dependency, subserviency and sycophancy that is repugnant to Americans who are prone to boast that this is "the home of the brave and the land of the free."
>
> The disposition to extend the scope of the anti-political activity rule of the Civil Service Commission has been to deprive Government employees of practically every political right that this nation has bestowed upon all other citizens. It is the tendency to make of every government employee a political nonetity, much the same as though he were a serf or a subject of an absolute monarchy.[2]

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[1] Proceedings at the Annual Meeting of the National Civil Service Reform League, 1906, pp. 180-86; Good Government, op. cit.

[2] Federal Employees, I, No. 6 (1916), pp. 222-24.

Following this protest, the National Federation of Federal Employees adopted at its first convention held in September, 1917 the following resolution:

> That appropriate steps be taken by this body promptly to effect the abrogation or modification of the inhibition against active participation in political activities by Federal employees, such activities to be limited, however, to elections for State, Territorial, County and Municipal offices; and that the foregoing resolution be urged on the ground that this denial of the right freely to exercise the franchise constitutes an act of usurpation which makes a national neuter of each and every one who is of inherent right a sovereign citizen.[1]

In this resolution the freedom to engage in political activities involving federal elections was not demanded. There was a proposal during the convention that it be resolved that a further extension of freedom to include such activities be urged. Because there was a fear that such a resolution would create a strong reaction on the part of the government, thus weakening the influence of federal employees in the halls of Congress, this proposal was not passed. The resolution adopted was characterized as "a 'middle of the road' proposition."[2]

Another resolution was adopted by the National Federation of Federal Employees at its convention in 1918, which, in part, reads as follows:

> Resolved, ... That the construction of the rule against pernicious political activity which prohibits nonpartisan opposition on the part of federal employees to the election or candidacy of those who villify and abuse them should be rescinded, and that a construction should be adopted which will permit the exercise by federal employees of their rights as citizens in so far as nonpartisan political activities are concerned.[3]

In the preamble of this resolution it was declared that "the Constitution of the United States guarantees to all citizens thereof the equal protection of the laws," and that federal employees, having been "wantonly attacked" by "certain individuals holding elective offices under the United States Government," were denied by the rule and construction of the Civil Service Commission

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[1]Resolution No. 10, see Propectus of the National Federation of Federal Employees (September, 1917).

[2]Federal Employee, II, No. 10 (October, 1917), p. 589.

[3]Resolution No. 3, see Federal Employee, III, No. 11 (Novenmber, 1918), p. 1123.

any opportunity to defend themselves against their attackers.[1] The purpose of this resolution was to secure the construction of the rule which would permit "nonpartisan" political activities in federal elections. Thus, it was not demanded that they be given the full extent of political rights in the field of federal politics. However, nowhere was it explained how such activities, if permitted, could be distinguished from partisan political activities. One may well doubt if any such distinction could be made and carried out justly in practice.

The so-called reconstruction program of the American Federation of Labor, adopted at its annual convention in 1919 also declared that public employees "must not be limited in the exercise of their rights as citizens."[2] Similar demands have been made by the National Association of Letter Carriers. At its biennial convention in 1923 the following resolution was adopted by the Association:

> Whereas postal employees have been prohibited from engaging in any political activity which we believe interferes with their right of franchise as citizens, and
>
> Whereas the founder of the Great American Commonwealth never intended to so disfranchise any of its duly accredited citizens in such arbitrary fashion, and decidedly not the type of loyal citizenry as exemplified in the personnel of the Postal Service; therefore be it
>
> Resolved, That the 24th Convention of the N. A. L. C. goes on record as protesting against this unjust order, and that our National officers be instructed to use every effort to have this order rescinded, and endeavor to have legislation enacted which will restore and grant to postal employees the same rights and franchise enjoyed by all other citizens.[3]

Resolutions and declarations above considered sufficiently indicate the reaction on the part of federal employees against the restrictions of their political rights. The demand for the abrogation of these restrictions has, however, never been pressed vigorously. Differing from members of the British Civil service, no great pressure has been brought to bear upon the government for the reconsideration of restrictions of political rights of civil

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[1] Ibid.

[2] Report of the Proceedings of the 39th Annual Convention of the American Federation of Labor (June, 1919), p. 73.

[3] The Postal Record, XXXVI, No. 9 (September, 1923), 329. Similar resolutions were made in 1925, 1929 and 1931. See ibid., XXXVIII, No. 10 (October, 1925), 351; XLII, No. 10 (October, 1929), 387; XLIV, No. 10 (October, 1931), 413.

civil servants in this country. According to Lewis Mayers, the program of the National Federation of Federal Employees for the removal of such restrictions is to be taken rather as "an expression of a sentimental objection on the part of employees to any restrictions upon their political rights as citizens than a well defined intention to effect their removal."[1]

Whether any practical step will actually be taken by civil service employees to abrogate the present restrictions appears, at present, to be a matter of conjecture. However, judging from such movements in England, we may expect them to do so, and, hence, the question of whether civil service employees should be given a greater freedom in political activity will have to be decided sooner or later.

It has been said that the only justification for the restrictions on political activity is the need for the complete suppression of all possibilities of the entrance of political factors in the personnel administration. It has been pointed out that "it is difficult to see how the present restrictions on political activity of classified employees can be dispensed with without grave danger of a gradual but certain return of that political influence." This may have been realized by organizations of federal employees and explains why no practical step has been taken for the abrogation of these restrictions. But when the personnel system is thoroughly safeguarded from politics, there will be, as it has been asserted, no reason why civil service employees should not be permitted to take as active a part in political life as any other citizen.[2]

Are there no other justifications for the prohibition against political activity of civil servants? Aside from the danger of interference with elections by government employees which had motivated statesmen of earlier days, like Jefferson and Webster, to attempt to debar public servants from taking an active part in politics,[3] the justifications have been fully expounded

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[1]Mayers, op. cit., p. 166. [2]Ibid., pp. 165-66.

[3]The fear of the influence of government employees at the polls takes a new form today. The potential power of the increasing government employees has been regarded as dangerous, if uncontrolled. Prof. E. A. Cottrell has said: "When we think of the tremendous percentage of persons in this country who are now on some form of public salary or grant or pension, and see the tremendous power which they may exercise at the polls, I think

by the British investigators. Indeed, the doctrine of civil service neutrality ought to be an important consideration in deciding the matter. Complete freedom of civil servants in political activity will inevitably result in their being partisans. This is diametrically opposed to the political impartiality which we should expect civil servants to observe.

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we have to consider whether some measure cannot be taken to limit the so-called political activities of this group" (Minutes of Evidence, op. cit., p. 430). Similarly, B. S. Deutsch, President of Board of Aldermen of City of New York, has said: "I am afraid if the number of municipal employees increase . . . . you would run the danger of having a government controlled by a bureaucracy of employees, which has a great many dangers" (ibid., p. 139).

CHAPTER VI

UNIONISM AND NEUTRALITY

Like wage workers in private industries, civil servants have found it necessary to organize to protect their common interests. "It has been," states Walter R. Sharp, "the experience of government workers everywhere that the amelioration of their material status must have organized self-pressure as its initiative impetus."[1] Unionism, according to Robert F. Hoxie,

> . . . . is not a thing which exists only among wage workers. In its broadest sense it may be as pervasive as social grouping. It may exist wherever in society there is a group of them with consciousness of common needs and interests from the rest of society.[2]

It is in this sense that the term unionism is used.

That civil servants should be permitted to organize is now less frequently questioned. In most jurisdictions the right of civil service employees to organize is recognized. But out of unionization many perplexing questions have arisen. Should civil service unions be permitted to take political action for the purpose of enforcing their demands? Should they be allowed to affiliate with outside groups--political parties and labor unions? Should such militant action as the strike be permitted? Falling within the orbit of this discussion are the effects of such actions upon the doctrine of civil service neutrality.

Prior to 1880, with the exception of the National Teachers' Association, established in 1857, almost all the organizations of public employees were of the nature of a benevolent society.[3] Such a society was established in 1817 among the clerks employed in the

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[1]Walter R. Sharp, The French Civil Service: Bureaucracy in Transition (New York: Macmillan Co., 1931), p. 493.

[2]Robert F. Hoxie, Trade Unionism in the United States (New York, 1923), p. 59, n. 3, quoted by William E. Mosher and J. Donald Kingsley, in Public Personnel Administration (New York: Harper & Bros., 1936), p. 493.

[3]Leonard D. White, Trends in Public Administration (New York: McGraw-Hill Co., 1933), pp. 283 ff.

civil departments of the Federal government, the purpose being to provide annuity and other benefits for families of the members in case of death.[1] Similar associations of firemen, policemen and teachers existed in other jurisdictions.

The belated development of unionization of civil service employees can be easily explained when one considers the conditions in government employment prior to the adoption of the Pendleton Act in 1883. Party patronage which created uncertainty of tenure in the civil service hindered the development of solidarity among members of the service. The way for unionization was not prepared until about 1890, when such elements as the strengthening of labor unions, the attainment of a certain degree of stability in the civil service, and the consciousness of common interests were present.[2]

In Chicago, the union movement of city employees did not take place until after 1895. The adoption of the civil service law in that year, together with the rapid increase in the cost of living and the growth of organized labor, laid the foundation for the unionization in the city service.[3]

No statistical estimation has ever been made as to the extent to which public employees are organized today. It is said that probably 50 per cent of public employees in the United States are organized.[4] The percentage of organized public employees in France, including national and local, is higher, about 60 per cent.[5] Still higher, perhaps, is the percentage of the number of those who belong to associations and unions in the British civil service. In England the general movement toward organization was greatly facilitated by the introduction of the Whitley Councils.[6]

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[1] See Articles of the Provident-Association of Clerks, Employed in the Civil Departments of the Government of the United States, within the District of Columbia, 1817.

[2] L. D. White, Trends in Public Administration, p. 229.

[3] James W. Errant, "Trade Unionism in the Civil Service of Chicago" (Unpublished Ph.D. Dissertation, Department of Political Science, University of Chicago [in preparation]).

[4] Wm. E. Mosher and J. Donald Kingsley, Public Personnel Administration (New York: Harper & Bros., 1936), p. 498.

[5] W. R. Sharp, op. cit., p. 467.

[6] L. D. White, The British Civil Service, in Civil Service Abroad, Commission of Inquiry on Public Service Personnel, Monograph 2 (New York, 1935), p. 47.

Among employees of the Federal Government, postal employees undertook first to organize what are regarded as "strictly public service unions." The poor working conditions in the closing years of the nineteenth century gave rise to these unions. The year 1890 witnessed the establishment of two unions, the National Association of Letter Carriers and the National Association of Post Office Clerks, which has been known since 1906 as the National Federation of Post Office Clerks.[1] The membership of these two unions now totals 92,250.[2] Seven other unions have been organized at different times; they are the United National Association of Post Office Clerks, the National Rural Letter Carriers' Association, the Railway Mail Association, the National League of District Postmasters, the National Association of Postal Supervisors, the National Alliance of Postal Employees, and the National Federation of Rural Letter Carriers, making the Post Office Department the most highly unionzed branch of the Federal government.[3]

Outside the postal service, the unionization of Federal employees did not begin until 1917. In that year the National Federation of Federal Employees was established in Washington, D. C., growing out of the failure of government salaries to keep pace with the increasing living cost at that time. The National Federation remained the only organized group in the clerical service until 1932, when the American Federation of Government Employees was established. The membership of these two bodies is estimated at 64,885.[4] These two organizations and the postal service groups represent the substance of the union movement in the Federal service, apart from the skilled trade and common labor.

The union movement in state and local services is a very recent development. As a recent survey shows, of the thirty organizations in state and local services studied, ten were founded during the period from 1902 to 1920, nine from 1920 to 1930, and eleven subsequent to 1930.[5] This movement in state governments

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[1] L. D. White, Trends in Public Administration, pp. 299-300.

[2] See Mosher and Kingsley, op. cit., p. 498.

[3] For membership of these unions, see the same.

[4] See Mosher and Kingsley, op. cit., p. 498.

[5] J. W. Errant, "The Contribution of Organized Employees in the State and Local Governments of the United States to the Sound Administration and Advance of the Merit System," Monthly Bulletin of the Municipal Employees Society, XVI, No. 12 (December, 1936), 3.

has made little headway, the main reason being that strong political influence prevails in many of them.[1] In the municipal service, however, the movement has made very rapid progress, especially in large cities, such as New York, Chicago and San Francisco. In Chicago there were 122 organizations in 1929 devoted to the protection of the various employee interests. Approximately 80 per cent of the 25,000 city employees, and 67 per cent of the 15,000 persons employed by the Board of Education were organized.[2]

What constitute the common needs and interests of civil service employees which induce them to organize? However diverse the groups are, there are certain objects commonly found. Their object is the improvement of working conditions, such as the shortening of working hours, increase in salaries and wages. Practically all the unions are the direct results of dissatisfaction with working conditions. Commonly found in the constitutions of civil service unions is also the provision for the protection and promotion of the merit system and the so-called civil service rights--certainty of tenure, equal opportunity of promotion, freedom from political removal, etc. The promotion of comradeship and solidarity is also a common object.

It may be safely said that the objects or motives of most of the unions in the public service are not objectionable. Perhaps no impartial observer would condemn the desire of civil service employees to improve their economic and social status. However, while their objects are justifiable, the tactics and methods adopted by these unions to fulfill their aims have not met with general approval. From the viewpoint of this discussion, such tactics and methods are of greater significance and demand more detailed consideration.

The outstanding characteristic of civil service unions which differentiates them from the ordinary trade union is their dependence upon favorable legislation. Since the compensation, hours, and conditions of work are all fixed by law, it is through the enactment of favorable legislation that the improvement of the material status of civil servants must come. Therefore, the

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[1] For lists of organizations of state employees, see L. D. White, Trends in Public Administration, p. 301, and Mosher and Kingsley, op. cit., p. 501.

[2] James W. Errant, "Trade Unionism in the Civil Service of Chicago," op. cit.

most important task of most of the civil service unions is to effect such legislation. The way to carry out this task is to bring sufficient pressure upon the legislators; and, hence, political action is important.

No revelation as to the importance of this weapon was needed, and it has been resorted to since the early history of union movement in the public service. In 1888 when the bill providing an eight-hour day for letter carriers was before Congress, the Knights of Labor was an active supporter of the bill. The carriers were not organized then, but it was generally known that they pledged in return for the support of the bill by the Knights to support the candidates, both national and local, whom the Knights endorsed.[1]

One of the first instances in which a member of Congress was singled out for defeat by civil service unions is the case of Representative Loud. In 1903, as the chairman of the House Post Office and Post Roads Committee, Representative Loud antagonized employees of the postal service by his persistent opposition to their demands for a revision of the compensation schedule in force. This led to a determined effort to defeat him in the 1904 election, and he failed to be re-elected.[2]

Representative William S. Cowherd, who had been prominent in the opposition to favorable measures for Federal employees, was also defeated in 1904. His opponent in the election, Edgar C. Ellis, won because of the active support of civil service unions.[3]

Representative Jesse Overstreet, who was chairman of the House Post Office Committee, attributed his defeat in 1908 to the employee opposition. He displeased the employee associations by supporting the so-called "gag" rule.[4] A comparatively recent case of the defeat of a member of Congress by the influence of civil service unions was that of Representative Borland of Missouri. He angered the federal employees in Washington by introducing a bill for the lengthening of their working hours without increasing

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[1]Lewis Mayers, The Federal Service (New York: A. Appleton Co., 1922), p. 547.

[2]Hearings, House Post Office Committee, 1913, pp. 120-21; Lewis Mayers, op. cit., pp. 547-48; Sterling D. Spero, The Labor Movement in a Government Industry (New York: Macmillan Co., 1927), pp. 99-100.

[3]S. D. Spero, op. cit., p. 273. [4]Ibid.

their pay. He was defeated in the primaries in Kansas City, Missouri, in 1918 by the votes of federal employees and their affiliated trade unions.[1]

The instances are few in which civil service unions have succeeded in defeating in elections members of Congress who have shown antipathy to their interests. The cases above mentioned, however, show that these unions are not utterly impotent in this respect.

It has also become the practice for the heads of the associations or the editors of the official organs to threaten the opposition of large bodies of government employees unless their demand is granted or the measure against their interests dropped. In the 1904 presidential campaign, the president of the National Federation of Rural Letter Carriers interviewed the campaign manager of the Republican party asking him to help secure a favorable report on the Fairbanks bill providing for increases of salaries then before the House Post Office Committee. The chairman of the House Committee was opposed to the bill. The president of the National Federation warned that unless the bill was reported out favorably, the carriers although supporting President Roosevelt would work for a Democratic House.[2]

Such a threat has been at times sufficiently effective to frighten members of the legislature. In 1910 Representative Lloyd argued in favor of allowing employees to appeal to Congress for remedial legislation. He brought out the fact that if the employees were not justly treated, they would resort to political means, as in the case of the defeat of Loud.[3] In 1920, Representative Blanton was seriously concerned with the threats of associations of federal employees. The following statement he made in Congress is significant:

> This matter I put in the Record a while ago containing threats of employees as to what they and their organizations are going to do to Congressmen if they do not support their demands. The gentleman from New York (Mr. MacCrate) says it does not affect us. I wish to God it did not affect us, ...

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[1] The Federal Employee, III, No. 9 (September, 1918), 865-866, 872-75.

[2] Benjamin Glassberg's unpublished manuscript on political activity and organization of public employees, in the library of New York Bureau of Municipal Research.

[3] Hearings, House Committee on Post Office, 1910, p. 279.

> And they are continuously coming to us with their threats and demands.
>
> They say that we are going to hear from them and their organizations in the elections and on the hustings. Our Government clerks say so. They and their affiliated associate, the American Federation of Labor, have placed the distinguished Speaker and "Uncle Joe" Cannon and myself and others on the blacklists. . . . . They are going to ask you whether you voted for this economy motion of this man Blanton of Texas. . . . . They are going to pin you down as to whether or not you have stood for these things that Blanton has proposed here in behalf of the People, or whether you have voted for these threats and demands.[1]

Another form of political action to which civil service unions have resorted in enforcing their demands is what is called playing politics "back home." This method is particularly important in the case of those unions a large number of whose members live in the District of Columbia, and being non-voters, are not feared by members of Congress. This situation is fully brought out by the report of the legislative committee of the National Federation of Federal Employees to its annual convention in 1919:

> Because of the fact that residents of the District of Columbia have no vote, the largest Local in the National Federation, that is the organization of the employees in the Washington service, has the least direct influence upon Congress. The National Legislative Committee pointed out, therefore, to officers of the local the importance of organizing a back fire upon members of Congress by friends and relatives of the members of the local who are voters in their own states. The union responded promptly to this and is now making a detailed catalogue of its members according to Congressional districts. This will unquestionably augment the legislative forces of the National Federation to a vast degree.[2]

The importance of this work is frequently stressed. While members in the District of Columbia are to organize a "back fire" by their friends and relatives in congressional districts, other locals are to get busy directly on their congressmen. Telling what the locals should do during the recess of Congress, the president of the National Federation wrote as follows:

> Senators and representatives are now back home with their fingers on the pulses of their constituencies, seeking guidance in the enactment of laws when Congress is again assembled.
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> This is the greatest opportunity afforded the locals to

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[1] Congressional Record, 66th Cong., 2d Sess., p. 9007.

[2] Report of the President, Legislative Committee and Secretary-Treasurer, National Federation of Federal Employees (1919), p. 5.

> exert their influence on their representatives in Congress, bring forcefully to their attention the situation with respect to the civil service and the legislation most needed looking to an improvement of the service all along the line.
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> To the congressman, no voice speaks as loudly as that which comes, dimly though it may, from the far off regions which he represents. . . . .[1]

Making financial aid to political campaigns by civil service unions is unlawful. Such instances are, however, by no means totally lacking. An investigation conducted by the United States Civil Service Commission concerning the activities of the National Federation of Gaugers, Storekeepers and Storekeeper-Gauters disclosed the fact the association in 1910 had aided financially the campaign of John W. Langley, candidate for re-election to Congress. Congressman Langley at the preceding session of Congress had aided in securing legislation for the relief of revenue employees and had announced that it was his purpose to take up additional measures in their behalf. Various sums were contributed to his campaign by the local branches of the association located at Cincinnati, Chicago, Baltimore, New Orleans, and New York. This investigation disclosed several other similar cases.[2]

The method now most generally used by civil service unions is that of giving wide publicity to the work of their friends. The speeches of friendly legislators are reprinted, and their photographs adorn the pages of the official organs. For instance, in the June, 1932, issue of the Federal Employee there is found a full record of the roll call votes on the "Economy" Bill, listing separately the names of members of the House who voted "yeas" and those who voted "nays." This is, as it is stated, "for the information of membership" of the National Federation of Federal Employees.[3] In the same issue there may be found thirty-seven photographs of "members of the House who have been outstanding in upholding cause of workers."[4] In commenting on the elections, due notice is given to the election or defeat of friends of public employees. When elections are pending, anxieties for the re-elec-

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[1] Federal Employee, IX, No. 7 (July, 1924), 6.

[2] Thirty-fourth Annual Report of the United States Civil Service Commission (1917), pp. 135-38.

[3] Federal Employee, XVII, No. 6 (June, 1932), 5-7.

[4] Ibid., pp. 20-21.

tion of friends are expressed. Such a statement as the following may often be found in the official organs of civil service unions.

> On March 4, 1925 will terminate Mr. Sterling's second term of office in the United States. It is to be sincerely hoped that he will be returned to the Senate by his constituents, and that the high order of public service he has rendered will be rewarded by a sweeping endorsement of continued confidence. We will await with great interest the returns from the primaries to be held in South Dakota, March 25, 1924, at which time Senator Sterling will come up for renomination. Our best wishes follow him. No better selection for the United States Senate can be made than Thomas Sterling.[1]

What has been said above represents, incomplete as it may be, a picture of the political action of civil service unions in urging legislation and in striving to influence members of Congress.[2] Similar action is taken by unions in state and local services. Organizations of city employees of Chicago watch very closely the activities of the state legislature and the City Council.[3] We may now ask what are, if any, the limitations or restraints upon civil service unions in exerting influence upon the legislature.

For a period of ten years, Federal employees were prohibited from communication with Congress under the so-called "gag" orders. The first of these was issued by President Roosevelt on January 31, 1902, as a result of his disapproval of the activity of postal unions in connection with the salary revision legislation. This order prohibited all officers and employees "either directly or indirectly, individually or through associations, to solicit an increase of pay or to influence or attempt to influence in their own interests, any other legislation whatever, either before Congress or its committees or in any way save through the heads of departments under or in which they serve, on penalty of dismissal from the Government service."[4]

This order obviously aimed at organized attempts by Federal employees to influence legislation. In response to a letter

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[1] Postal Record, XXXVII, No. 3 (March, 1924), 75.

[2] Lobbying methods of public service unions are best described by E. Pendleton Herring, Group Representation before Congress (Baltimore, 1929), chap. ix.

[3] Conversation with leaders in Chicago.

[4] Nineteenth Annual Report of the United States Civil Service Commission (1902), p. 75.

from the United States Civil-Service Retirement Association requesting permission for the formulation of a bill for the retirement of superannuated employees, President Roosevelt under date of February 21, 1902, replied in part: "Permission is restricted to acts pertinent and necessary to the single object proposed, namely, to obtain information, upon which legislation for the retirement of superannuated employees may be based."[1]

By amendment of January 25, 1906, the order was extended to include also the independent establishments.[2] By order of President Taft on November 26, 1909 the prohibition was made more sweeping. Federal employees were prohibited from communication with Congressional committees or Congressmen not only on their own motion but also in response to requests for information by either House of Congress, except through the department head.[3]

The severity of the restriction imposed by these orders upon the activities of organization of Federal employees led to a determined effort to secure their repeal by Congressional action. This movement was supported by many members of Congress, some of whom were dissatisfied with these orders, others feared to encounter the influence of organizations of Federal employees in elections. The movement culminated in the adoption of the Lloyd-La Follette Act of August 24, 1912, which provides that "the right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress or any member thereof, shall not be denied or interfered with."[4]

Since the adoption of this act, unions of Federal employees have not been subjected to any restriction in communication with Congress. As Dr. Herring has stated, "The necessity for such legislation, if the unions of employees were to amount to anything, is obvious."[5]

However, the mere appealing to Congress or Congressmen

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[1]United States Civil Service Commission, Civil Service Act, Rules, and Executive Orders (Edition of November, 1906), p. 65, notes.

[2]For provisions, see ibid.

[3]For provisions, see Twenty-seventh Annual Report of the United States Civil Service Commission (1911), p. 93.

[4]Section 6, Stat. L. 555.

[5]E. Pendleton Herring, op. cit., p. 144.

individually for favorable legislation without being coupled with some coercive measure has been found ineffective, and, therefore, political action of that nature, has been frequently used. In this respect, civil service unions are governed by the Civil Service rule relating to political activity of civil servants. This rule applies equally to organizations of civil servants and to individuals. They are accountable for political activity by persons other than themselves, "if, in fact, the employees are thus accomplishing by collusion or indirection what they may not lawfully do directly and openly." The United States Civil Service Commission has interpreted in detail this rule in connection with political activity of organization of civil service employees. Thus, the Commission has asserted:

> It is clear that what an employee may not lawfully do independently he may not lawfully do in open or secret cooperation with others. What he may not lawfully do directly he may not lawfully do indirectly; and what he may not lawfully do personally he may not lawfully do by an agent, officer, or employee chosen by himself or subject to his power. It may be urged, with much show of reason, that the employees are not instantly responsible for violation of law committed by their associates, their officers, or their agents, in which violation they did not personally participate, which they did not personally approve and advise, and of the intended commission of which they had no previous notice or knowledge. Every employee is, however, clearly responsible for a continuation or a repetition of the abuse of power vested by such employee in an association, or its officers or in other persons. Such responsibility may be terminated only by establishing and maintaining effective control over such agencies or by the withdrawal of the power so vested in them. The Commission conceives these principles to be fundamentally sound and to be conclusive of the rights and liabilities of employees.[1]

This rule, however, has not been scrupulously observed, and, in fact, organizations of Federal employees have often disregarded it with impunity. Usually only around election time does the Civil Service Commission become more vigilant.

The publicity in newspapers relating to the illegal solicitation of campaign funds among internal revenue employees who were members of the National Federation of Storekeepers, Gaugers and Storekeeper-Gaugers led to an investigation by the Civil Service Commission in 1916. As the result of this investigation,

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[1]United States Civil Service Commission, Information Concerning Political Assessments and Political Activity of Federal Office-holders and Employees, Form 1236, October, 1926 (Washington: Government Printing Office, 1926), pp. 5-6.

some of the most active members were dismissed and several others were suspended.[1]

In the July 31, 1920 issue of the Federal Employee, there was reprinted from the Savannah Morning News, Savannah, Georgia, with comment, an article criticizing Senator Hoke Smith because of his opposition to the Johnson-Nolan minimum-wage bill at the preceding session of Congress. This action was declared by the Civil Service Commission a violation of its rule relating to political activity. "Senator Smith being a candidate for renomination," wrote the Commission, "an attack in the public press is political activity." And, again:

> To make a public attack on a candidate for public office is to take active part in a political campaign. Such action by an employee is violative of Rule I and may subject the offending employee to separation from the public service. If the attack is made by the joint action of several employees, the guilt is still personal and attaches to each employee separately and severally for the purpose of the administration of the civil service law.[2]

Another case on record arose in the political campaign of 1932. W. M. Collins, president of the Railway Mail Association, sent a circular letter to members of the association in Minnesota where Representatives-at-large were to be elected in November. The letter contained a tabulation showing how those aspiring to re-election voted on the "Economy" Bill, together with a statement by Collins that it was "entirely proper" that "you should remember your friends on election day." The Civil Service Commission announced that this was in violation of the rule. The fact that Collins was not in the employ of the Federal Government made no difference, for "what an employee may not lawfully do he cannot employ agents or officers or choose other persons to do."[3]

The action of the Civil Service in the latter two cases was followed by strong protests of the unions involved. Following the ruling of the Commission in 1920, there was published in the Federal Employee an article entitled "Free Speech for Government Employees at Stake," declaring that if the interpretation of the

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[1] Thirty-fourth Annual Report of the United States Civil Service Commission (1917), pp. 135-39.

[2] Thirty-seventh Annual Report of the United States Civil Service Commission (1920), pp. 105-106; the Federal Employee, V, No. 31, 8-10.

[3] New York Times, July 17, 1932.

situation by the Civil Service Commission were to be accepted, "federal employees would be admittedly deprived of their constitutional right of free speech and their right to petition Congress or members of Congress as provided for in the Lloyd-La Follette Act of 1912."[1] In the 1932 case, President Green of the American Federation of Labor declared that the issuing of "letters or statements making direct or implied suggestion that the Federal employees vote for or work for the return to office of those legislators whose records are regarded favorable in matters primarily and solely concerning Federal employees," was vital to "the organized labor movement" of Federal employees, and he threatened to initiate legislation in Congress "to protect the rights of these employees." Members of the executive council of the American Federation of Labor were of the opinion that if the Federal employees were "gagged," the example of the United States Civil Service Commission would be followed by state and city civil service bodies.[2]

In addition to the strong influence of Federal employee organizations and their affiliated organized labor, there is the difficulty of holding employees directly responsible for acts of officers of their organizations who are usually not in the government service. It is, therefore, clear that the rule relating to political activity, so far as it applies to organizations of Federal employees, will not likely be effectively enforced, and, perhaps within certain broad limits, political action by civil service unions will continue.

The fear of the political influence of organized groups of public employees is alive in the minds of some writers who are familiar with the situation of the dock-yard constituencies of Great Britain.[3] Thus, in discussing the proper means of action of employee organizations, Dr. W. F. Willoughby has stated:

> Any attempt on their part, or by their members individually, to exert pressure upon the legislature through engaging in political activities having for their purpose to promote the election of representatives favorable, or the defeat of those antagonistic, to their demands, can only be condemned.

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[1] Federal Employee, V, No. 35 (August 28, 1920), 8.

[2] New York Times, July 17, 1932.

[3] A. Lawrence Lowell, The Government of England (New York: Macmillan Co., 1926), I, 149-53.

If there is any doubt about this, the experience of England would be conclusive.[1]

It has also been said that it would be deplorable if civil servants were to dictate to the legislature as to what should be done in their case, pointing out that this power may be used for their selfish purposes against public interests or sound public administration.[2] Fortunately, this situation, at least as far as the Federal service is concerned, seems to be remote. There is little danger of the organized Federal employees at the present time exceeding their proper bounds. In the opinion of Dr. Mayers, with the single exception of the Retirement Act, the measures contended for by organization of Federal employees have been in the main well considered.[3]

The more important consideration in this connection is whether civil service unions have assumed party complexion. Have they, in urging legislation or opposing unfavorable measures, favored or supported one party as against another? The answer, as far as organizations of Federal employees are concerned, is negative. One thing which practically all the Federal employee organizations are anxious to avoid is the suspicion of being partisan. Active members of one of the unions have even gone so far as to recall their president when the latter's authorship of a Republican campaign pamphlet became known. The defense was that the pamphlet was written under the author's name as a private citizen and not identified with the union. But feelings were roused to such a pitch that the president was finally compelled to resign for "writing a partisan political statement."[4]

In urging favorable legislation, unions of Federal employees appeal to Republicans as well as Democrats in Congress. If a Republican was attacked, it was not because of his party affiliation but his antagonism toward the measures they favored or

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[1] W. F. Willoughby, Principles of Public Administration Baltimore, 1927), p. 365.

[2] Herring, op. cit., pp. 156-57.

[3] Mayers, op. cit., p. 561.

[4] This is the case of E. Claude Babcock, who was the president of the American Federation of Government Employees. The pamphlet he wrote was entitled "Influence or Merit," in which the "spoils politics" of the Roosevelt administration was attacked. See New York Times, June 9, 1936, and Washington Times, Washington, D. C., May 26, 1936.

desired. In supporting or favoring candidates for re-election, the legislative records and not party background of legislators have been the determining factor. In short, the rule of game has been to favor or support those who have been friendly to their interests and to oppose those who have been antagonistic, cutting across the line of party division.

Hence, it appears that no reasonable objection can be raised to political activities of the Federal employee organizations, and one may well admit that such activities are inevitable. So long as power over personnel matters is wholly retained in the hands of Congress, the employees have no alternative but to organize and attempt to secure from Congress the enactment of what they regard as their just demands.

The situation in large cities such as New York and Chicago is, however, quite different. The Civil Service Forum of New York, which claims to be the leading organization of employees of the city, is controlled "by a political leader who professes to be concerned solely with the welfare of the civil service employees." As experience has shown, "the interest of the Forum is closely related to the interests of the Tammany political organization." The publication of the group, which is known as the "Chief," has been "the mouthpiece of the Democratic political party among the civil service employees of the City."[1]

With the exception of the Municipal Employes Society, which is by provisions of its constitution, required to refrain from political affiliation,[2] unions of municipal employees in Chicago have close relationship with local political machines. It is a generally accepted fact that they contribute to campaign funds and that some of the leaders "hustle" in the wards before elections. The political strength of these groups is measured subsequently in awarding salary advances to their members. Not infrequently these unions have taken advantage of their political

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[1]Letter from Mr. H. Eliot Kaplan, executive secretary of the National Civil Service Reform League, February 5, 1937.

[2]Article 13 provides, "Discussion of questions of a political or religious nature at any of the meetings are prohibited, nor shall the Society go on record, at any time, as favoring any candidate in any national, state, county or city election, nor for any position within the gift of the employes of the city." Revised Constitution of the Municipal Employees Society of Chicago, adopted January 9, 1930.

strength to influence higher officials "to take unwarranted action in matters affecting personnel." This has been carried to such an extent that "honest officials have been embarrassed and whatever plans they have made for the orderly conduct of the municipal government have been frequently overturned."[1]

Another important problem arising out of the unionization is that of affiliation with outside groups--that is, labor unions and political parties. Affiliation with political parties, with the exception of unions of municipal employees in certain cities, has not become a problem in this country. With regard to affiliation with the organized labor, however, there is a wide variety of arguments.

Among associations of Federal employees above mentioned, the number of those which are affiliated with the American Federation of Labor and those which are not affiliated is about evenly divided.[2] Unions in the postal service which are affiliated are the National Association of Letter Carriers, the Railway Mail Association, the National Federation of Post Office Clerks, and the National Federation of Rural Letter Carriers; while the United National Association of Post Office Clerks, the United Rural Letter Carriers' Association, the National League of District Postmasters, and the National Association of Postal Supervisors are not affiliated with the American Federation of Labor. The National Federation of Federal Employees, which was since its establishment in 1917 affiliated with the American Federation of Labor, severed its labor affiliation in 1932 and has since then remained unaffiliated. The newly established American Federation of Government Employees is a chartered member of the American Federation of Labor.

Among associations of state employees, the number of those which are unaffiliated is greater than those which are affiliated.[3] Of the aggregate of forty thousand public employees of Chicago, about seventeen thousand are affiliated with labor and twelve thousand are in sympathy with labor movement in the city.[4]

In the Federal Service, the right of affiliation is

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[1]James W. Errant, "Trade Unionism in the Civil Service of Chicago," the concluding chapter.

[2]See Mosher and Kingsley, op. cit., p. 498.

[3]Ibid., p. 501.

[4]James W. Errant, loc. cit.

impliedly extended to employees by the Lloyd-La Follette Act of 1912, which provides that "membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, ... shall not constitute or be cause for reduction in rank or compensation or removal of such person or group of persons from said service."[1]

Since the terms of affiliation of unions of Federal employees with the American Federation of Labor do not require them to engage in any strike against the United States, nor propose that the American Federation of Labor shall assist them in any strike, this condition in effect legalizes the affiliation of these unions with the American Federation of Labor.

In some cities, unions of firemen and policemen are prohibited from affiliating with outside groups. For instance, in Norfolk, Virginia, there is a regulation providing that members of the fire and police departments cannot be members of any association outside of the departments. The prohibition is based on the ground that affiliation would destroy their full loyalty and allegiance to the departments.[2] With these exceptions the right of affiliation is not denied in this country.

The problem of affiliation of Federal employee organizations with the organized labor was a subject of long debate in the Senate in 1920, following the introduction by Senator Myers of a proposed amendment of the retirement bill, which aimed at prohibiting affiliation with the American Federation of Labor. The proposed amendment provided that none of the provisions of the Retirement Act "shall apply to and none of its benefits shall be received or enjoyed by any person who is a member of any association, society, organization, or union of Government employees which is affiliated with, subject to, or a member or component part of, or acknowledges the authority of, any higher or superior body or institution of organized labor."[3]

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[1] Section 6, 37 Stat. L.,555.

[2] "Some Personnel Problems of City Managers, A Summary of Panel Discussion on Personnel Administration held at the 23rd Annual Conference of the International City Managers' Association, 1936," Public Management, January, 1937, pp. 13-23.

[3] Congressional Record, 66th Cong., 2d Sess., pp. 5131-32.

The proposed amendment failed to pass the Senate. The arguments advanced in support of the amendment may be summarized as follows: first, that the American Federation of Labor had taken a position against the government in the steel strike and the coal strike, and that affiliation therefore put Federal employees in the position of being against the government; second, that the American Federation of Labor was a class organization and it was improper for one in the government service to affiliate with such an organization; third, that the American Federation of Labor was engaged in a political campaign against the Congressmen and Senators who had incurred its disfavor, and that affiliation with it put the organized Federal employees in the position of conducting a political campaign against members of Congress; and fourth, that through the affiliation with the American Federation of Labor, the Federal employees were seeking to coerce Congress into the enactment of legislation favorable to their own interests.[1]

These arguments represent very well the opinion of all those who have opposed affiliation of unions of government employees with the organized labor.

Among Federal employee organizations which are opposed to affiliation, the United National Association of Post Office Clerks has set forth its attitude most clearly:

> As civil service employees, post office clerks have certain obligations, certain restrictions, not common to the civilian world. They take an oath to their country similar to that taken by soldiers and sailors. . . . . Civil service employees are forbidden to threaten the government either openly or by implication. They are forbidden to strike against the government. . . . . Affiliation (with the American Federation of Labor) can have but one object and that is to threaten the government. Outside labor organizations insist on the right to strike against the government, and also participate in politics. . . . . No greater danger faces the country than the possibility of domination of the government service by labor organizations. It means a politico-labor bureaucracy.[2]

Recently the United National Association of Post Office Clerks again declared:

> Unapocs have successfully weathered all storms for fifty years. We have always sought and received help from all creeds and classes and organizations for we are the servants

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[1] Ibid., pp. 5132 ff.; Lewis Mayers, op. cit., p. 557.

[2] The Post Office Clerk, quoted by L. D. White in Introduction to the Study of Public Administration (New York: The Macmillan Co., 1929), p. 384.

> of them all, but we believe in unity and not in union with outsiders, however just and right they may be. We believe in isolation and NOT in affiliation.[1]

On the other hand, those employee organizations which are affiliated with the American Federation of Labor look upon the affiliation as a natural and necessary step. Thus, section 3 of the constitution of the National Federation of Federal Employees before its severance from labor affiliation provided: "With a view of coordinating the energies and influence of all Federal employees in support of our claims, we strongly urge them and all national organizations of Government employees to affiliate to the American Federation of Labor to secure complete cooperation and cohesive action of all interested in the common cause, under one jurisdiction."

Similarly the National Federation of Post Office Clerks declares in its constitution: "It has been demonstrated by past experience that trade-union movement as exemplified in the American Federation of Labor is the best and most practical method of advancing the interests of all wage-earners; therefore we desire to be and to remain in full affiliation with that body.[2]

We may now well ask what is involved in affiliation. One thing that is clear is that affiliation means a closer connection between civil servants and organized labor. The payment of monthly and special assessments is required by the rule of the American Federation of Labor. Representation at the conferences and meetings where problems of common interests are discussed and disagreements settled is also an obligation. Affiliation also means the assistance of the organized labor in bringing pressure upon the legislature for favorable legislations. In this particular, the organized labor has been most helpful. Finally, affiliation may produce a sympathetic attitude on the part of civil servants toward the labor class. Although such an attitude has not been widely extended, it may become a serious problem.

One of the objections to affiliation of government employee organizations with organized labor is that it places too much political power in the hands of government employees, and that this power will likely be exercised for their own purposes

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[1] The Post Office Clerk, XXIX, No. 4 (February, 1933), 12.

[2] Article 2, sec. 1.

contrary to public interests. However, as has been pointed out, this situation has not developed and there is hardly such a tendency.

Another objection to affiliation is that since government employees are servants of the whole public, they cannot properly identify themselves with organized labor, which is but a part of it. This is more important from the point of view of this discussion. The sympathetic attitude toward the labor class, if widely extended, will most likely engender public suspicion as to their impartiality. The problem will become more acute, if the organized labor enters politics under an independent banner.

The problem of affiliation of civil service unions with the organized labor in England was aggravated by the existence of the Labour Party. Before the Trade Disputes Act of 1927, many large unions of civil servants were affiliated with the Labour Union Congress and with the Labour Party. The problem first attracted the attention of the government authority in 1914. The Royal Commission on the Civil Service, after stating "that two important associations of Post Office Servants are formally affiliated to a political party represented in the House of Commons, and send delegates to the conferences of that party," remarked:

> The difficulty is confined to political action alone. So long as an Association limits itself to Service action, no one expects that any restriction should be placed on its activities. But when an Association becomes affiliated to some political organization connected with a parliamentary party different questions arise.

And, again:

> . . . . it may be said that the close association of large groups of civil servants with any political party, whether in a minority or otherwise, would impair the reputation with the public of the Civil Service for impartiality, a result of which is in itself to be deprecated.[1]

The Commission offered no solution, but recommended a special inquiry on a series of important questions, among which were, "Should Associations of civil servants be at liberty to join with outside Trade Unions?" and "Should Associations of civil servants be at liberty to affiliate themselves to political parties?"[2]

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[1] Fourth Report of the Royal Commission on the Civil Service, Cmd. 7338 (1914), pp. 98-99.

[2] Ibid., pp. 99-100.

No such inquiry was conducted, and the matter was dropped until 1926, when the events of the general strike forced the issue forward again. The answer of the government is found in Clause V of the Trade Disputes and Trade Unions Act of 1927. By provisions of the clause civil service unions are no longer allowed to affiliate with outside groups--labour union and political parties.[1] The position of the government relating to the whole matter is best summarized by Dr. Herman Finer: "Civil Servants enjoyed the special advantage of being a 'sheltered' occupation, and the price of this was political neutrality."[2]

In this country, it seems that, under the present situation, no such action will be taken by the government to debar civil service unions from affiliating with organized labor. Since the proposal of Senator Myers in 1920 to prohibit affiliation of Federal employees organization with the American Federation of Labor, no similar attempt has been made again. The situation may become different, however, if a nation-wide independent labor party comes into existence, and if civil service unions join with such a party.

Arising out of the unionization of civil servants is also the problem of strikes. It has been asserted that government employees should not be permitted to go on strike, because they owe an undivided allegiance to the state, and public welfare demands the uninterrupted operation of the services which the government provides. This is the main ground on which statutory prohibitions against the strike of government employees in many countries rest. On the other hand, it has been argued that the so-called primary functions of the state have no inherent qualities which entitle them to special considerations, and, therefore, the government has no "extraordinary privileges" to deny the right to strike to its employees.[3]

Two kinds of strike may be distinguished. The first is

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[1]L. D. White, Whitley Councils in the British Civil Service (Chicago: University of Chicago Press, 1933), chap. xv; G. H. Macrae-Gibson, "The British Civil Service and the Trade Unions Act of 1927," the American Political Science Review, XXII, No. 4, 922-929.

[2]Herman Finer, Theory and Practice of Modern Government (London, 1932), XI, 1421.

[3]Spero, op. cit., chap. i.

one which is called primarily and solely for the amelioration of the strikers' working conditions. Failing other means, the strike may be resorted to in order to enforce their demands. The other is the sympathetic strike. It is called not for their own sake, but for the cause of others, usually workers in the industrial world. From the viewpoint of the doctrine of neutrality, the first kind is of no great importance, for whatever inconvenience and danger it might cause the community, it would seem to impair none of the qualities of neutrality. It appears clear that, while civil servants should carry out their duties impartially and faithfully, it does not mean that they should have no voice in regard to the conditions under which they work. It is only fair that the government should, in return for the loyal service of its employees, provide for them adequate compensation and satisfactory working conditions. The other kind of strike is, however, incompatible with the doctrine of neutrality. By going on strike of that nature, they are supporting a single group as against the whole community. The incompatibility is more evident, if the original strike is called against a policy of the government, for, as has been said, the loyal acceptance of policies of the government of the day is an essential quality of neutrality. However, while these two kinds of strike are distinguishable, it is evident that it would be impossible to prohibit one kind of strike of civil servants without prohibiting the other.

During the general strike of 1926, the British civil service engaged in a "most spectacular politico-economic controversy." Although no civil servant actually went out on strike, there was, however, such a possibility, and, in fact, the sympathy of a large body of civil servants toward the strikers was definitely shown. In the negotiations leading up to the crisis, several leaders of civil service unions, affiliated with the Trade Union Congress and the Labour Party, were active participants. On the eve of the general strike, some of them declared that they would turn over to the Trade Union Congress the power to call their members out on strike, and also promised financial aid to the strikers. In the course of the strike financial support was given the strikers from funds of many civil service unions, and the more radical leaders attended trade union meetings frequently. Moreover, promise was secured from the department heads that members of the civil service would not be required to perform

other than their normal duties, and civil servants were advised not to volunteer for duties outside those for which they were expressly engaged.[1] The upshot of this spectacular controversy is Clause V of the Trade Unions and Trade Disputes Act of 1927. One of the intentions of the government in making provisions in Clause V was to divide civil servants from the rest of organized labor, with the particular purpose of removing all danger that in any event such as the general strike of 1926 government employees might be called out on strike.[2] In the course of debate in Parliament the position of the government was well stated in the following words:

> The situation which was developed in May last was that organizations of the civil servants whose undivided allegiance the state has a right to claim were, in fact, through their officials, actively engaged in fomenting a rebellion against the state. That, in the judgement of the government, is an intolerable situation in which to find the established civil servant. We think that we have a right to expect that, whatever party in power, the state should have the loyal and undivided service of those who have entered the Civil Service.[3]

While it may seem that much can be done by legal action, the problem is really much deeper. The state may prohibit affiliation by legal means, but it is powerless to prevent class consciousness of its employees. Thus, Dr. Herman Finer, speaking of the British civil service, has stated:

> We have yet to see whether Civil Service neutrality can be maintained if burdened with any vital problem of conscience. We must not be too sangiune that our future is likely to be as free of social cleavage as our past. It should be remembered that during the General Strike of 1926, a large number of Civil Servants would not, on conscientious grounds, volunteer for duties outside those for which they were expressly engaged. Feelings were roused to a pitch where numbers of Civil Servants seceded from their association because they thought it had taken up a 'disloyal' attitude. There are times, in fact, when the policy of a Government directly affects the vital nature of the State. We should be foolish to imagine that old habits will continue to rule in such trying days.[4]

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[1] L. D. White, Whitley Councils in the British Civil Service, chap. xiv; idem., The British Civil Service, in Civil Service Abroad, Commission of Inquiry on Public Service Personnel, Monograph 2, pp. 48-49.

[2] J. H. Macare-Gibson, "The British Civil Service and the Trade Unions Act of 1927," American Political Science Review, XXII, No. 4 (November, 1929), 922-29.

[3] Statement of the Attorney-General, Parliamentary Debates, Commons, 5th ser., Vol. CCV (1927), col. 1332.

[4] Herman Finer, op. cit., pp. 1398-1399.

No such event as the general strike of 1926 in England has been experienced in this country. There have been a few strikes, but the nature of these strikes is quite different. The "Fairmont strike," occurring at Fairmont, West Virginia, in 1915, and involving the entire postal staff of twenty-five men, was the result of the arbitrary discharge of three members of their colleagues by the postmaster. The most serious strike on record in this country is that of the Boston police force in September, 1919. One of the main issues was the demand by the men for higher salaries. Not infrequently there have been threats or actual strikes of small groups of city employees, arising over the issues of the adjustment of working conditions.[1]

The American public has been since 1919, if not before, strongly opposed to the strike of public employees. The disastrous results of the Boston police strike are still vivid in the minds of the public. Following the threat of strike of the electrical employees of the city of Chicago in January, 1937, there appeared in the Chicago Daily News an editorial entitled "There Exists No Right to Strike Against Public Safety," in which the following was said:

> It is an intolerable thing that any group of employees of the city of Chicago, no matter what their grievance, should put a pistol to Chicago's head and demand immediate acceptance of the terms they lay down.
>
> There Exists No Right For Anybody Anywhere to Strike Against The Public Safety. That was demonstrated, and overwhelming popular support for this principle was disclosed, in the Boston police strike.
>
> . . . . Discontinuance of traffic lights, the raising of bridges and the other measures adopted to force immediate compliance with demands made, put the public in DANGER. The mayor and the city government have no duty MORE IMPORTANT than that of PROTECTING the citizens against such tactics.
>
> The DUTY of maintaining safe conditions for the public on the streets of Chicago rests on the shoulders of the MAYOR and the CITY GOVERNMENT. To make the discharge of THIS duty subservient to ANY group of city employees is utterly inadmissible. Abundant power exists to PREVENT such subservience.

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[1] Sterling D. Spero, Employer and Employee in the Public Service, in Problems of the American Public Service, Commission of Inquiry on Public Service Personnel, Monograph 9 (New York: McGraw-Hill Co., 1935), pp. 179-92; L. D. White, Introduction to the Study of Public Administration, pp. 391-94. For numbers of Municipal employees involved in "industrial disputes," see monthly issues of the Labor Monthly Review, United States Department of Labor.

In case of need, this power MUST be exercised.[1]

As has been stated, the Lloyd-La Follette Act of 1912 places certain restrictions on Federal employee organizations among which is that they may not affiliate with "any outside organization imposing an obligation or duty upon them to strike against the United States." These words sufficiently indicate the disapproval of strikes. Besides this the Federal government has other means of preventing or suppressing strikes. There are a number of statutory provisions ample enough to cover any attempt to strike against the government, among which are those relating to obstruction of mails and to conspiracy against the United States.[2] In the Federal service as well as in other jurisdictions, the power of removal and the application to the courts for injunctions are the means which may be resorted to in the event of strike of government employees.[3]

Perhaps, more effective and fundamental in preventing the possibility of strike than the legal means which have just been stated is the denial by civil service unions to use such strategic weapon. Many of the organizations of government employees in this country have declared against the use of strike. Thus, the International Association of Fire Fighters proclaims that "We shall not strike or take active part in any sympathetic strikes as our position is peculiar to most organized workers, as we are formed to protect the lives and property of communities in case of fire or other serious hazards."[4] The constitution of the American Federation of Government Employees declares: "We oppose and will not support strikes against the United States government, picketing or other measures having the effect of embarrassing it."[5] Similarly the National Federation of Federal Employees provides

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[1] Chicago Daily News, January 25, 1937.

[2] For the provisions see 35 Stat. L. 1098. Another statutory provision which might be interpreted to prohibit strikes in the Federal service is that which applies to certain of the industrial establishments. See 35 Stat. L. 1097.

[3] Spero, Employer and Employee in the Public Service, pp. 179-192.

[4] Article 3, sec. 2 of the constitution; see also George J. Richardson, "Labor Unions in Fire Departments," Public Management, January, 1937, pp. 6-9.

[5] Article 2, sec. 3.

in its constitution that "under no circumstances shall this Federation engage in or support strikes against the United States Government."[1]

From what has been considered it does not appear that the strike of public employees has become a problem in this country. If there is a well designed machinery for the presentation by civil servants of their views, both as to current minor grievances, and as to basic questions of compensation, hours, and conditions of work, and vested with it adequate authority to rectify improper conditions, the danger of such strikes as have occurred will be insignificant. However, the possibility of large-scale sympathetic strike, remote as it is, is a much more difficult question, depending much upon the future political, economic, and social developments. Whether civil service neutrality can be maintained in the face of any "vital problem of conscience" is, indeed, a question to which no answer may be readily made.

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[1]Article 2, sec. 2.

CHAPTER VII

CONDUCT CODES AS A SAFEGUARD OF THE CIVIL SERVICE NEUTRALITY

In the preceding chapters our attention has been directed largely to the legal aspects of the doctrine of civil service neutrality. The inadequacy of this treatment is inevitable. We must not be unmindful of the inefficacy of the external control as evidenced through the action of personnel agencies and other restraints As has been shown previously, the civil service laws and rules have not always been scrupulously observed or enforced. However elaborate is the law, it is likely to fail to achieve fully its purposes, if lacking the voluntary and spontaneous co-operation on the part of those whose conduct is to be governed. This is perhaps even more true with the civil service laws and rules governing the conduct of civil servants.

As has been demonstrated by the experience of professional and industrial groups which have adopted codes of ethics or standards of practice as a control of the individual conduct, it appears that much can be done by such self-discipline on the part of civil servants. If it is realized, as it has been realized by professional groups, that the integrity and common welfare of the group depends fundamentally upon an ethical code adequately observed by the members in their conduct or practice, much of the external control will be unnecessary, or at least the rigidity of legal restraints will be found obsolete. The following statement of Prof. Marshall E. Dimock is highly significant and challenging:

> In the past our thinking of government has been distorted because of over-emphasis on restraints, on agencies of external control. This approach is probably explained in large measure by the theological assumptions which have created a general "climate of opinion." Perhaps we are on the threshold of a new era, in which positive, inspiring standards of professional conduct will progressively replace uncertainty, apprehension, and the sporadic inquisitions which have emanated from the legislative and judicial branches of the government, ... No amount of outside pressure can make an incompetent, unprincipled employee fulfil high standards of conduct.[1]

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[1]Marshall E. Dimock, "Forms of Control over Administrative

It will be remembered that in demanding the removal of the restraints of political rights of civil servants, one of the arguments advanced by civil service unions in England was that the professional ethics in the British civil service would be adequate to maintain civil service neutrality after the removal of such restraints. It was contended that the professional ethics would impress upon the individual the undesirability of taking public action which might prejudice his professional work. The skepticism on the part of the British government as to the validity of this argument was attributed to its refusal to grant to civil servants their demands.[1] However, we may say that a well-developed professional code will undoubtedly make the rigid legal restraints unnecessary, if it is not adequate to substitute them in entirety.

What is a conduct code? A conduct code is also called "professional ethics," "code of ethics," "standards of practice," "standards of professional conduct," "canons of ethics," "code of honor." It consists of standards for the guiding or regulating of the individual conduct. One of the definitions given is as follows:

> A code of ethics is simply a list of rules and regulations governing the more common, the more important, and the chief friction-causing relations of a group of people with common interests. It is a list of "thou shalts" and of "thou shalt nots" for a particular group. It deals with the obligations, virtues, sins and vices of that group. It is not meant to be a guide for general morality; it does not essay to supplant the decalogue.[2]

In the case of such professions as the physician, the engineer, the minister, the written code is preceded by an unwritten one. Lying behind the written code is the slow development of the unwritten standards of conduct. The evolution of such standards proceeds somewhat like this: A new profession arises in response to the demands of society for men to perform a new type of work. As soon as the profession has attained a certain degree of maturity and stability, there comes a feeling of group consciousness and a

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Action," in Essays on the Law and Practice of Governmental Administration, a Volume in Honor of Frank Johnson Goodnow, ed. Charles G. Haines and Marshall E. Dimock (Baltimore: The Johns Hopkins Press, 1935), p. 314.

[1] Supra., chap. iv.

[2] Ward G. Reeder, "The Need of a National Code of Ethics for Teachers," School and Society, XXV, No. 541 (April 9, 1927), 417.

sense of public service. Coincident with this feeling, or immediately following it, there comes a feeling of pride in the profession and a desire to do something to further the progress of it. In due course of time certain standards of conduct are expected to be followed in their relations with one another and with the public, thus evolving an unwritten code of ethics.[1]

On the other hand, most of the trade associations have drawn up their codes of ethics without this traditional background. In some cases the code was drafted with much haste, without adequate study of conditions, and adopted without discussion in the trade convention. However, there has been little evidence of hypocrisy or camouflage. As Edgar L. Heermance has said, "the written code was an honest attempt at self-expression."[2]

A widespread and growing interest in the improvement of human relationships through self-discipline has characterized the social movement in this country since the turn of this century. This interest has been expressed by the adoption of codes of ethics or standards of practice by professional and industrial groups. A volume containing approximately 200 such codes adopted by national and interstate groups was published in 1924.[3] Few of these were adopted before the closing of the last century. Fifty-two appeared between 1900 and 1920, and 140 between 1920 and 1924.

At the meeting of the Interprofessional Committee of the American Academy of Political and Social Science held in Detroit in 1919 leaders in various fields discussed the value of codes and standards of conduct as means for improving both professional service and professional relationships. As a result of this conference the May, 1922, issue of the Annals of the Academy was devoted almost entirely to the subject. The consensus of opinion expressed in these articles was that codes of ethics and statements of approved practice and conduct are effective means for the attainment of better professional conduct and higher social

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[1]Carl F. Taeusch, Professional and Business Ethics (New York: Henry Holt Co., 1926); Edgar L. Heermance, The Ethics of Business (New York and London: Harper & Bros., 1926), chap. ix.

[2]Edgar L. Heermance, Can Business Govern Itself? (New York and London: Harper & Bros., 1933), p. 201.

[3]Edgar L. Heermance, Codes of Ethics (Burlington, Vermont: Free Press Printing Co., 1924).

levels. The frequent treatment with the problems of professional ethics at state and national conferences, in trade journals, and in professional schools in recent years is another evidence of the increasing interest in these problems.

There is a variety of opinion as to what caused the recent growth of interest in problems of professional ethics. James Melvin Lee contends that the activities of the "muck-rakers" in the early years of this century resulted in the urge toward higher ethical standards in business.[1] Edward N. Kent maintains that the movement was not stimulated primarily by idealistic reformers but arose naturally from men's developing sense of mutual responsibility.[2] Richard C. Cabot believes that the work of the Federal Trade Commission, organized in 1915, was one important factor,[3] while Robert D. Kohn suggests that the movement was the result of the keener moral sensitiveness stimulated by the experiences of the World War.[4] Undoubtedly, the aggressive campaign for code writing conducted by the International Association of Rotary Clubs gave an impetus to the movement.[5] Whatever the causes may have been, it has been the general conviction that the adoption of definite standards of conduct or practice is mutually beneficial to the professions concerned and to the society as a whole.

The movement for the adoption of standards of professional conduct among teachers has paralleled the movement in other professional and industrial groups. The first official state code for teachers was adopted in 1896 by the state teachers' association in Georgia. The California association followed the example

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[1]James Melvin Lee, Business Ethics (New York: Ronald Press, 1926), p. 45.

[2]Edward N. Kent, The Business Side of Dentistry (C. V. Mosby, 1929), p. 20.

[3]Richard C. Cabot, Adventures on the Borderlands of Ethics, (New York and London: Harper & Bros., 1926), pp. 78-79.

[4]Robert D. Kohn, "The Significance of the Professional Ideal," The Annals of the American Academy of Political and Social Science, CI, No. 190 (May, 1922), p. 1.

[5]Guy Gundaker, "Campaign of the International Association of Rotary Clubs for the Writing of Codes of Standards of Practice for Each Business and Profession," The Annals, CI, No. 190 (May, 1922), pp. 228-236.

in 1904 and the Alabama association in 1908. By 1920, the teachers' associations of eight states had adopted official codes,[1] and by 1933, thirty-four state associations reported the adoption of such codes. The National Education Association appointed a committee on ethics in 1924 and in 1929 officially adopted the code recommended by the Committee.[2]

Agitation for a code of ethics for city managers was initiated in 1924 by M. F. D. Danielson of Hinsdale, Illinois.[3] A committe consisting of four city managers was created for this purpose. Their report was presented to the Montreal Convention of the International City Managers' Association in 1925 and was officially adopted.

The movement for the adoption of standards of conduct among civil servants as a whole in different jurisdicions has not thus far taken place. True, large bodies of engineers, physicians and other technicians in the civil service subscribe to some dodes of ethics. Similarly, purchasing agents in the municipal service subscribe to the code of ethics adopted by the National Association of Purchasing Agents, and school superintendents subscribe to the code of the National Education Association. But in these cases, the codes are for members of such professions alone. To be of any value as far as the doctrine of civil service neutrality is concerned, the code must be adopted upon the initiative of members of the civil service, specifying their obligations and responsibilities and laying down rules of conduct to be observed by the members. A brilliant example is set by the city managers; but unfortunately, this example has not been followed.

At this point we may ask is the civil service a profession? To answer this question it is necessary to inquire what is meant by "profession." The Century Dictionary defines a

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[1]Theodore Day Martin, Instruction in Professional Ethics in Professional Schools for Teachers (Washington D. C.: National Education Association, 1931), pp. 7-8.

[2]Material and letter dated February 14, 1937, from Dr. T. D. Martin, Director of Membership of the National Education Association.

[3]Frank D. Danielson, "A Code for the City Manager Profession," City Manager Magazine, VI, No. 1 (January, 1924), pp. 29-30.

profession as:

> . . . . a vocation in which a professed knowledge of some department of science or learning is used by its practical application to affairs of others, either in advancing, guiding, or teaching them, or in serving their interests or welfare in the practice of an art found on it . . . . the word implies professed attainments in special knowledge as distinguished from mere skill; a practical dealing with affairs, as distinguished from mere study or investigation, and an application of such knowledge to uses of others as a vocation, as distinguished from its pursuit for one's own purposes. In professions, strictly socalled, a preliminary examination as to qualifications is usually demanded by law or usage, and a license or other official authority founded theron required.

Using this definition, it appears reasonable to say that the civil service is a profession. Under the merit system, entrance examination is required. After entering the service, one may take it as a permanent vocation. Furthermore, the government service has become specialized, in the sense that a person without training in "some department of science or learning" may not be qualified to do the work.

There are certain conditions essential to the development of a code of professional conduct. One of the precedent conditions is "exclusiveness." As Professor Dimock has pointed out, "Codes of conduct are usually found only when almost the entire profession or trade has been brought within a common organization."[1] In some localities this condition has been, to some extent, attained. A good example is the Municipal Employees Society of Chicago, whose membership represents a large proportion of employees of the city.[2] In the Federal service, however, there is not a single organization which may claim to be representative of Federal employees. This is, of course, not to say that definite standards of conduct should not be adopted until all the Federal employees are brought within a common organization. An organization such as the National Federation of Federal Employees may well take the lead in proposing standards of conduct that may ultimately come to be accepted by employees throughout the service.

Another condition essential to the development of standards of conduct for civil servants is a reasonable degree of

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[1]Dimock, "Forms of Control over Administrative Action," op. cit., p. 311.

[2]The Municipal Employes Society reports its membership on December 31, 1936, as 5,800. See Monthly Bulletin of the Society, XVII, No. 1 (January, 1937), 9.

freedom from economic want. So long as civil servants are grossly underpaid, they are likely to bend most of their organized effort toward improving their financial conditions and to give little thought to the standards of individual conduct.[1] In the past, civil service unions have devoted themselves largely to the promotion of legislation designed to ameliorate the economic status of civil servants. With the exception of the determination of most of the unions against the use of strike as a weapon in enforcing their demands, they appear to have concerned themselves but little with matters of professional ethics. The reason for this is to be found in the greater urgency of the betterment of working conditions and compensation.

Another condition which need be considered is that recruitment, promotion, and other personnel matters must be administered impartially. So long as partisan and other influences continue to be important factors in such matters, it is hardly conceivable that a code of conduct will be brought into being. While it does not mean that all progress toward the desired goal must wait until the merit system has been established in every "nook and corner" of governmental jurisdiction, it does mean that no branch of public service is likely to make any contribution to the adoption of professional standards of conduct. It is reasonable to expect that the development of conduct codes will first take place in the Federal service and in the civil service of some cities where the spoils system has been most successfully curbed.

That the conditions mentioned above are not insuperable barriers to the development of conduct codes of civil servants needs no further elaboration or argument. In fact, groups in the civil service often aspire to the recognition which professional status confers.[2]

We may now consider what should be the general character

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[1] It should be noted that in 1932 the average annual compensation in the Federal service was higher than that in the whole of industry. See Dimock, Modern Politics and Administration (New York: American Book Co., 1937), p. 290.

[2] Leonard D. White, "Administration as a Profession," The Annals of the American Academy of Political and Social Science, January, 1937, pp. 89-90.

or contents of a conduct code of civil servants. Realizing that it would be presumptuous as well as futile to enumerate the items which should be included in such a code, we shall consider only the code of ethics of city managers, which may be used as an example by civil servants, and what have been suggested to be included in such a civil servants' code.

The code of ethics of city managers consists of the following sections:

1. The position of Cith Manager is an important position and an honorable position and should not be accepted unless the individual believes that he can serve the community to its advantage.

2. No man should accept a position of City Manager unless he believes in the Council-Manager Plan of Government.

3. In personal conduct a City Manager should be exemplary and he should display the same obedience to law that he should inculcate in others.

4. Personal aggrandizement and personal profit secured by confidential information or by misuse of public time is dishonest.

5. Loyalty to his employment recognizes that it is the council, the elected representative of the people who primarily determine the municipal policies, and are entitled to the credit for their fulfillment.

6. Although he is a hired employee of the council, he is hired for a purpose--to exercise his own judgment as an executive in accomplishing the policies formulated by the council, and to attain success in his employment he must decline to submit to dictation in matters for which the responsibility is solely his.

7. Power justifies responsibility, and responsibility demands power, and a City Manager who becomes impotent to inspire support should resign.

8. The City Manager is the administrator for all the people, and in performing his duty he should serve without discrimination.

9. To serve the public well, a City Manager should strive to keep the community informed of the plans and purposes of the administration, remembering that healthy publicity and criticism are an aid to the success of any democracy.

10. A City Manager should deal frankly with the council as a unit and not secretly with its individual members, and similarly should foster a spirit of cooperation between all employees of the City's organization.

11. No matter how small the governmental unit under his

management, a City Manager should recognize his relation to the larger political subdivisions and encourage improved administrative methods for all.

12. No City Manager should take an active part in politics.

13. A City Manager will be known by his work, many of which may outlast him, and regardless of personal popularity or unpopularity, he should not curry favor or temporize but should in a far-sighted way aim to benefit the community of today and posterity.[1]

Commenting on the code, Professor Leonard D. White states that it "more nearly demonstrates the vitality of a professional spirit than any other document in the history of the manager movement."[2] While all the sections are highly significant and inspiring, sections 5, 8, 12 and 13 are particularly noteworthy from the point of view of the doctrine of civil service neutrality. Under these sections, city managers are not to take an active part in politics, and they are to carry out loyally the policies determined by the elected representatives and to serve the public without discrimination or special favor.

Writing on the subject in 1922, William C. Beyer suggested what he called the more obvious essentials of the code for civil servants as follows:

1. He should at all times be courteous, especially in his dealings with citizens who come to him with complaints or for information, assistance or advice.

2. He should give the best that is in him to the work he is called upon to perform.

3. He should deal faithfully with all citizens, and should not accord to some more favorable treatment than to others.

4. He should not limit his independence of action by accepting gratuities or favors from citizens who have business dealings with the government.

5. He should never be a party in any transaction which would require him, as a representative of a department of government, to pass upon the quality or price of goods or services which he, in some other capacity, is offering for sale to that department.

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[1]Clarence E. Ridly and Orin F. Nolting, The City-Manager Profession (Chicago: University of Chicago Press, 1934), Appendix III, pp. 125-126.

[2]Leonard D. White, The City Manager (Chicago: University of Chicago Press, 1927), pp. 284-285.

6. If a public servant is asked by his superior to do something which would jeopardize the vital interests of the public, he should first dissuade his superior from pressing request, and if this method proves unseccessful, he should tender his resignation, stating publicly his reasons for doing so.

7. A public servant who is charged with the enforcement of a law with which he is not in sympathy should subordinate his personal views or resign from the service.

8. He should work in full cooperation with other public servants in furthering the ends of government and in promoting public welfare.

9. He should be true to his obligations as a custodian of public property and regard its misuse or waste as serious an offense as the direct misuse or waste of money from the public treasury.[1]

Suggestive as most of these sections are, reservations may be made. A satisfactory code can be attained only after careful thought and discussion of civil servants themselves, as the city managers did preceding the adoption of their code of ethics. Sentimental pleasantries which would amount merely to "an innocuously idealistic creed" should be avoided.[2] Sections which, in definite terms, discourage active participation in politics and require unreserved and undivided loyalty to the government of the day should be added. Political activities are what teachers regarded as "the pursuit of an avocation."[3]

What is the value of codes of conduct? Are they worth anything if not enforced? Early writers on the subject were inclined to put great value in the mere formulation of codes of ethics. Thus, Clyde L. King, in his foreward to the May, 1922, issue of The Annals of the American Academy of Political and Social Science, made the categorical statement, "Codes of ethics are important agencies for social control."[4] Similarly Franklin

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[1]William C. Beyer, "Ethics in the Public Service," The Annals of the American Academy of Political and Social Science, CI, No. 190 (May, 1922), 156-157.

[2]This is the criticism of Carl F. Taeusch on codes of teachers. See his Professional and Business Ethics, chap. v, pp. 140-170

[3]Ibid., p. 143.

[4]Clyde L. King, "Foreword," The Annals, CI, No. 190 (May, 1922), p. vii.

D. Jones expressed his conviction in the following statement:

> The ideals of men best project themselves into reality when crystallized in written documents. . . . . In every line of human activity a united written expression of that which is best for the common good becomes a strong force of progress. The mere expression clarifies the general sentiment.1

Richard C. Cabot, however, reached a different conclusion:

> Of what use is a code of ethics? As I have been familiar for many years with the medical code of ethics, which was one of the very few antedating the present century, and have seen how little effect it has on the behavior of physicians, I am not sanguine about any reform of business ethics to be produced merely by the formulation and publication of a code. The main question is how is it to be enforced?2

Benson Y. Landis, after studying the problem intensively, is also less positive about the value resulting merely from the formulation of written codes.[3] While writers agree that codes of ethics and standards of approved conduct and practice have considerable potential value, those who have studied the problem in later years emphasize the importance of making adequate provision for their dissemination and enforcement.[4]

The usual procedure in enforcing the conduct code is to set up a special committee authorized with the power to investigate complaints and to conduct hearings in cases of dispute. Some kind of professional sanction is imposed upon the offending member. Among professional groups, architects, accountants, and realtors have been most successful in enforcing their codes.

The American Institute of Architects has established two committees for the purpose of enforcing its codes of ethics: the Committee on Practice whose duty is to investigate charges of unprofessional conduct, and Judiciary Committee of the Board of Directors which tries cases of alleged unethical conduct. The procedure is briefly as follows: Complaints of the unprofessional

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[1]Franklin D. Jones, Trade Association Activities and The Law (New York: McGraw-Hill Co., 1922), p. 33.

[2]Richard C. Cabot, op. cit., p. 79.

[3]Benson Y. Landis, Professional Codes, A Sociological Analysis to Determine Applications to the Educational Profession, (New York: Teachers College, Columbia University, 1927).

[4]Dr. T. D. Martin says that he cannot prove that codes ethics of teachers are of great value when not enforced. His letter of February 4, 1937.

conduct are made in the first instance to the Committee of Practice. It is the duty of this committee to determine whether a prima facie case has been made out, after due investigation. If in its opinion, such a case exists, the committee sends a copy of its findings to the member involved and a copy to each member of the Judiciary Committee. It is then the duty of the Judiciary Committee to hold a formal hearing unless the member acknowledges the facts in the findings of the Committee on Practice and is willing to waive the formal hearing. At the hearing, the Judiciary Committee has the right to summon and to question witnesses for the purpose of bringing out all sides of the case. The findings of the hearing are reported to the Board of Directors. If such hearing is waived, the member involved is required to present a written statement in explanation of the alleged offense to the Judiciary Committee, which after rendering its decision thereupon reports to the Board of Directors. The Board of Directors alone has the power to discipline a member. The offending member is censured, suspended, or expelled.[1] In the past, the Committee on Practice has usually presented annually seven or eight cases of breaches of the conduct code for formal trial by the Judiciary Committee.[2]

The American Institute of Accountants also has special machinery for the enforcement of its code of ethics. It has created a committee on professional ethics, which has the power to hear and to consider any complaint preferred against a member of the Institute. When, upon consideration of a complaint, a prima facie case is established showing a violation of any rules of conduct, the committee reports to the executive committee which is expected to arrange a hearing at the regular or special meeting of the council, the governing board of the Institute. There is also an arbitration committee which "sits as a committee in equity to investigate and decide disputes between members," submitted to it by the agreement of the parties to the disputes. In case the decision of the committee on arbitration is rejected by either

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[1]For full explanation of this procedure, see The Annuary, 1924-1925, p. 93, the American Institute of Architects, Washington, D. C.

[2]Benson Y. Landis, op. cit., p. 16.

party to the dispute, the committee is to report the whole matter to the council with recommendations. If the recommendation is accepted, the council has the power to prefer charges against the offending member.[1]

The code of ethics of the National Association of Real Estate Boards is administered by its local branches. The practice of the local board in Grand Rapids, Michigan, may serve as an illustration. All complaints of violations of the code are referred to the board of directors, which meets weekly. Parties to the dispute are invited to attend the meeting, at which the board of directors renders its decision upon the evidence submitted by both sides. Before the evidence is submitted the complainant and the defendant are asked if they will abide by the decision of the board. If their answer is in the negative, the matter is referred to the arbitration committee. The complainant and the defendant must agree that the decision of the arbitration committee will be accepted by both of them before it accepts any evidence and its decision is final. The offending member is censured, suspended, or expelled in every instance.[2]

The necessity of some measure for the enforcement of the conduct code is also recognized by the International City Managers' Association. It has created a committee on professional ethics, composed of fifteen city managers representing different sections of the United States and Canada. Members of the Committee are to consider complaints of infractions of the code of ethics emanating from other members of the Association and to direct to the attention of the secretariat any such infractions. A city manager who has taken an active part in politics in violation of the code has been declined the renewal of membership in the Association.[3]

There have been very few occasions which would necessitate the secretariat taking sanctional measures. This is in large measure due to the fact that the city managers have not

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[1]The duties of the committees are described in the By-Laws of the Institute, see 1935 Year Book of the American Institute of Accountants, Appendix C, pp. 341-354.

[2]Landis, op. cit., pp. 77-80.

[3]Conversation with Mr. Orin F. Nolting, the Assistant Director of the International City Managers' Association.

hesitated to resign rather than to violate the standards of professional conduct. On the whole, the code is well observed. As Dr. White has stated,

> When Manager Brownlow deliberately refused to participate in a bitter campaign against himself in Knoxville, he followed the spirit as well as the letter of the code of ethics. When, as a hostile campaign against the charter opened, Manager Osborn of Kenosha asked the council if the friends of the charter would gain advantage if he should resign, he displayed a sense of loyalty to the city which overrode any personal gain.[1]

The compelling effect of the code of ethics upon city managers is also evidenced by the fact that in 1931 eight city managers resigned because council interfered with appointments;[2] in 1932 seven resigned for the same cause and one resigned because he was made an issue in council election;[3] and in 1933 eleven resigned because of interference of the council with appointments and with administration and one resigned because he was made an issue in the council election.[4]

Hence, in the case of city managers, the machinery for the enforcement of the conduct code has not proved to be of great use. Conscientious observation of the code has minimized the utility of professional sanctions. However, in most of the cases, enforcement is essential to make the code effective. It is, therefore, important that when a conduct code is adopted by civil servants, proper machinery for the enforcement of the code should be created.

The value of self-discipline of civil servants cannot, indeed, be exaggerated. Nothing can be more productive in attaining the confidence in the civil service neutrality on the part of the elected officials and the public than a conduct code which behooves civil servants to refrain from controversial politics and to be loyal to the government of the day. The conduct code will likely be more far-reaching in its effect upon the individual conduct of civil servants than the external control. It will supplement, if not supplant, outside pressure and remedy its

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[1] White, The City Manager, pp. 285-286.

[2] 1932 City Manager Yearbook, p. 16

[3] 1933 City Manager Yearbook, p. 304.

[4] The Municipal Yearbook, 1934, p. 195.

inefficacy. Problems of discipline will become less frequent, and, at least, the over-rigidity of such restraints as those imposed upon political rights of civil servants may be discarded.

As the conditions essential to the development of codes of conduct are not insuperable barriers, it depends upon the determination and statesmanship of civil servants. The development and maintenance of the doctrine of civil service neutrality will be greatly facilitated by well-developed standards of conduct of civil servants.

CHAPTER VIII

SUMMARY AND CONCLUSIONS

Modern government, as Professor Marshall E. Dimock has said, "acts as protector, assistor, regulator, and as owner and operator."[1] In scope, it envisages almost every branch of the moral and material sides of human endeavor. The fact that governmental functions have increased in volume and become complex and difficult makes it imperative that the civil service should be skilled and highly trained. The old belief that any well-meaning person could fill a government position acceptably has given way to the realization that only specialists and officials skilled by long experience can do efficient work. Therefore, there is in the country the movement for a better government personnel.

One of the basic ideas of government career service, as proposed by the Commission of Inquiry on Public Service Personnel, is permanent employment. Permanent employment is possible only when there is assurance of the unswerving loyalty on the part of members of the service. Partisan loyalty must be excluded. If civil servants are appointed on political grounds in order to secure their implicit loyalty, they surely cannot be accepted by a succeeding party of opposite faith as possessing loyalty to its programs. Civil servants must also maintain a proper reticence in public issues in order that their impartiality may not be suspected by their political superiors and the public. Complete confidence in the impartiality of public servants is essential to the continued existence of government career service. It may be said, therefore, that the system of government career service cannot succeed in the long run unless the neutrality of public servants can be maintained.

The success of the British civil service lies in large measure in the fact that it is considered as the impartial instrument of the state, to be used by whichever political majority is

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[1] Marshall E. Dimock, Modern Politics and Administration (New York: American Book Co., 1937), p. 53.

in power. Civil servants are expected to put forth their best efforts in rendering services under any political directors, and the political leaders are expected to refrain from tampering with the established means of recruitment and dismissal from the service. The civil service neutrality is in England an established tradition.

As the discussion in the previous chapters has disclosed, the doctrine of civil service neutrality involves rules or standards of conduct to be observed by both political leaders and civil servants. The former shall refrain from interfering with the conduct of civil service. Personnel administration must be independent of all political pressure. Political intervention in personnel matters cannot fail to have disastrous effect upon the development or maintenance of the civil service neutrality. Civil servants, on the other hand, shall serve with equal zeal and loyalty governments of any political complexion. They shall refrain from taking sides in issues upon which the nation is divided, and shall perform public functions with complete impartiality and equality.

The practice of making appointments and removals for political reasons may be attributed, in its early stages, to two factors: the lack of objective measures for the conduct of civil service, and the rise of political parties. As political parties became more highly developed, and the need for political support greater, the civil service became gradually the ammunition in the strife between political parties; and finally it was thrown entirely into the arena of political warfare. This development may be traced to the period of Washington's administrations. His proclamation in September, 1795, that the appointment of men to office whose political tenets were known to be adverse to measures of the government would be political suicide has since been the gospel of supporters of the patronage system. Under Jefferson's administrations, the practice of making political appointments and removals in order to strengthen the party's hold was widely used. The practice was later extended as the need for political support became greater. This is a natural and inevitable development, for which no one man or administration may be justly held responsible. The blame put upon President Jackson for his conduct of civil service is in large measure unjustified.

The practical results of this development are: first,

that in making appointments political opinions of applicants were scrutinized, eliminating persons of opposite political faith; second, that public offices were used as rewards for party services rendered, and that activities for the support of the party in power were encouraged; and finally, that wholesale removals were made with each change of political control. Tenure of office depended upon the political fortune of the appointing party rather than upon competence and efficiency. Differences of treatment in public service resulting from political antagonism were to be expected. In short, "political reliability" became the rule of the game.

The main purpose of the civil service reform movement preceding and following the enactment of the Pendleton Act of 1883 has been to eliminate the political patronage and to substitute for it the merit system. The general trend since then has been toward the expansion of the merit system. Besides the federal service, there are ten states and a large number of other jurisdictions which have passed civil service laws for the regulation of personnel administration. The effectiveness of the civil service laws, however, has not been uniform. In some jurisdictions, the law has been notoriously nullified; in others the conduct of civil service has not been wholly independent of political pressure. Many civil service commissions have failed, owing to their corruption by the politicians, and what is a function of the same thing, the inadequacy of the funds allotted to them for their work. Political influence may be brought to bear upon the personnel administration through various ways or devices ranging from financial starvation of the civil service commission to promotion through political pull.

The main stumbling-block in the development of civil service neutrality in most jurisdictions is, therefore, the omnipresent and at times omnipotent influence of political patronage, which inevitably bedevils such development. The "de-politicalization" of the civil service is as yet far from being completed. The very existence of political influence has necessitated more rigid restrictions upon the exercise of political rights by civil servants. Vigilant enforcement of such restrictions is necessary, if they are to be effective. In some jurisdictions where these restrictions have been incorporated in the civil service law or rules, no attempt is made to enforce them, owing to the political

control of the enforcing agency and to the realization of the futility of any such attempt.

The existence of political force interfering with the impartial conduct of civil service is due to the pressure for political support, which was one of the factors giving rise to the party patronage system. Patronage in public service still constitutes more or less the basis upon which the American party rests. Until an equally effective method of getting political support is discovered, we can hardly expect party leaders and organizers to refrain from interfering with the personnel administration.

Evidence is abundant to indicate that a substantial transformation of the methods of party organization is a necessary precedent, or concomitant of a non-partisan personnel system. It is a moot question whether or not the American party as at present constituted could exist without the power of patronage. This is a fundamental problem of statecraft, which reaches deep into the roots of American democracy and transcends the scope of this study. It remains to be revealed whether or not the American people will develop enough interest in the efficient and honorable conduct of public offices to insist upon a non-partisan and neutral civil service.

The reform of the civil service in England in the middle of the nineteenth century was brought about by a number of forces, among which was economic pressure. It has been said that the lack of this element in the American situation may for years to come stultify similar reforms in the American environment.

> The American spiritual climate is prodigal and American material resources vast beyond the dreams of avarice. No one will make a public service unless it is necessary; and so far it has proved to be not necessary to that degree which it was in England in the middle of the nineteenth century.[1]

This is challenging to American reformers. If this is the case, real reform awaits the presence of such pressure.

Party patronage not only results in removals at the change of political control but also gives rise to the abuses of the levying of political assessments upon government employees and the use of such employees by the party in power for political work. The practice of levying political assessments upon govern-

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[1]Herman Finer, "Better Government Personnel," Political Science Quarterly, LI, No. 4 (December, 1936), 574.

ment employees was once almost universal. Civil servants were required to pay into party coffers a percentage of the salary or an arbitrarily fixed sum to defray political campaign and other expenses. Refusal to pay was likely to be followed by discriminatory treatment or even removal from the service. The evil of this practice was recognized by Daniel Webster, who in 1841, as the Secretary of the State, issued a circular warning federal employees that payment of contribution or assessment for party or election purposes would be regarded by the President as cause for removal. The first legislation against political assessments was the act passed by Congress on August 15, 1876. This act, however, did not penalize the action of a presidential appointee for requesting or demanding contributions from his subordinates. For that reason this enactment did not have any particular effect. Not until the enactment of the Pendleton Act of 1883 was an effective statutory prohibition secured. Provisions somewhat similar to those in the Pendleton Act have been embodied in later civil service enactments in other governmental jurisdictions.

This legislation has greatly restricted the practice of political assessments, but has by no means eliminated it entirely. A great obstacle in the elimination of political assessments is the fact that the making of the so-called voluntary political contribution to a person not holding any official position is still permissible. The United States Civil Service Commission has proposed several times to Congress a statute which would prohibit the solicitation of political contribution from a federal officer or employee by any person whatsoever, but this recommendation has never received consideration from Congress. In some cities, where political assessments upon city employees have been made unlawful, the practice, to a considerable extent, still exists. For instance, in St. Louis and Kansas City, Missouri, political assessments have been continued as a matter of course.[1]

The use of civil service employees by the party in power for political work was also once an almost universal practice in the various governmental jurisdictions. Civil servants of various ranks, at the command of political overlords, would engage in

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[1]See Mind Your Business, Bureau of Municipal Research of St. Louis, No. 82 (October 21, 1930); Public Affairs, Kansas City Public Service Institute, Kansas, No. 386 (January 23, 1930).

various kinds of political activity, ranging from the getting of nomination signatures, canvassing voters in behalf of the party's candidates, serving on political committees, acting as delegates to political conventions, to delivering campaign speeches. The evil effect of such activities on the part of government employees was realized by President Jefferson who declared that the republican principle would be smothered by federal employees engaging in such activities. A circular was issued in 1802 warning federal officers and employees to refrain from "the business of electioneering." A somewhat similar circular was issued by Daniel Webster in 1841 under the direction of President Harrison. That such warnings were ineffective is not surprising when one learns the prevailing situation under the patronage system. The attempt to forbid federal employees from taking active part in political campaigns by legislative enactment in 1839 was defeated by the majority in the Senate on various grounds, one of which was that such prohibition would be contrary to the democratic ideas of free institution. The executive order of President Hayes on June 22, 1877, and that of President Cleveland on July 14, 1886, also aimed at the prohibition against active political activity or, as President Cleveland termed it, the "obtrusive partisanship" of federal employees. But these orders harvested no practical result, because they were either unenforced or enforced partially, discriminating against adherents of the party not in power.

The Pendleton Act of 1883 contained the provisions that "no person in the public service is for that reason under any obligation . . . . to render any political service," seeking to protect employees from being removed or otherwise prejudiced for refusing to render such service, and that "no person in said service has any right to use his official authority or influence to coerce the political action of any person or body"; but it did not prohibit federal employees from engaging in political activity. Not until 1907 was the present civil service rule relating to political activity placed upon them. This rule has been interpreted quite broadly and enforced rather vigilantly by the Civil Service Commission. Employees in the classified service are now prohibited from taking part in political activity other than the right to vote; the right to express privately opinions on political subjects; making of political contributions to any committee, organization or person not employed in the United States; membership in political clubs, provided they are not officers or

employees of the same; attendance as spectators at conventions, primary meetings and similar occasions; and participation in local elections in certain excepted localities.

In 1913 the legislature of Ohio, in its state-wide civil service law, made it unlawful for any officer or employee in the classified service of the state and its civil divisions, to be an officer in any political organization or "take part in politics other than to vote as he pleases and to express freely his political opinions." The Shern Act of Pennsylvania, enacted in 1906, imposed a similar prohibition upon officers and employees of cities of the first class in the state. Such prohibition has been embodies either in the civil service law or in the rules of the civil service commission in some of the other jurisdictions where the merit law has been adopted.

Whether or not the abridgement of rights of citizenship of government employees resulting from prohibition of active partisan activity has been too great is a question on which opinions differ. Unions of federal employees, such as the National Federation of Federal Employees and the National Association of Letter Carriers, have repeatedly protested against the restrictions upon political activity in the federal service. Lewis Mayers, author of the Federal Service, was inclined to think that the only reasonable justification for such restrictions is the need for the complete suppression of all possibilities of the entrance of political factors in the personnel system. It has also been said: "If American political parties can ever conclude to confine themselves to the legitimate purposes of a political party, namely: the advocacy of political principles, and the election of candidates who will support those principles, then these legal restrictions against partisan activity could be dispensed with."[1] When political parties divest themselves from their spoils propensities, will these restrictions be unnecessary, and, should they be abolished?

It would appear at the first glance that these restrictions would be unprofitable to the public and unjust to the civil servant. A democracy should strive to interest all members of the community in their government, and especially those who by education and training are best fitted to make intelligent decisions. Civil servants undoubtedly fall into the latter group. However,

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[1] Greater Cleveland, Vol. V, No. 31 (May 1, 1930).

the fitness of the civil servant to participate in political affairs is but one phase of the problem. He is not only a member of the democracy, but a public servant; and it is his public position and not his private capacities that leads to the necessity for a curtailment of his political activity. He is, under the merit system, no longer regarded as a member of a partisan body. He is independently appointed, he owes his position to no political party, and if he has personal convictions on public policies he is supposed to be discreetly reticent. The doctrine of neutrality must be maintained. The public and civil servants themselves must learn to regard the service as an impartial instrument of the state which will give unquestioned allegiance to whatever master the people may wish to choose.

Civil servants in England have repeatedly demanded the removal of the restrictions on their political rights. The answer to such demands made by the British government is that greater liberty in political activity will be destructive to the tradition of neutrality of the permanent civil service. Hence, the justification of the restrictions on political rights of civil servants is not merely that they are necessary precautions against the entrance of political influence into personnel administration, but that they are vital to maximizing the neutrality of the civil service. The requirement for a proper reticence in political affairs on the part of civil servants will always be necessary.

Has the government in imposing restrictions upon political activity of civil service employees encroached upon the constitutional rights of such employees and other persons? Have these restrictions violated any provisions of the constitution? These constitutional questions have been raised in a number of cases. In Ex parte Curtis, the right of Congress to prohibit "political co-operation between officials in the raising of funds for political purposes" was upheld by the United States Supreme Court. The law in question was the Act of August 15, 1876, which is the first legislation against the solicitation of political contributions in the service. The validity of section 12 of the Pendleton Act was upheld in U. S. v. Newton and in U. S. v. Glick. Section 11 of the same Act was declared constitutional in U. S. v. Wurzbach. In People ex rel Johnson v. Connolly, the Supreme Court of New York upheld the removal of a chief engineer in the Borough of Queens for the receiving of political contributions from other

civil service employees under section 26 of the New York civil service law. The validity of section 22 of the Chicago Civil Service Act, which prohibits solicitation in any manner of contribution for political purposes from any officer or employee in any department of the city government, has been questioned on the ground that it attempted to put such persons outside the class of the ordinary citizen and voter and any attempt of others to cooperate with them for the promotion of any public question was virtually prohibited, and therefore unconstitutional. The law was, however, upheld by the Supreme Court of Illinois in People v. Murray. These cases are the more important ones involves solicitation of political contributions from civil servants by their fellow officials or by other persons.

In McAuliffe v. Mayor of New Bedford, the Supreme Court of Massachusetts upheld the removal of a policeman for participation in political campaigns in violation of a rule of the police regulations of the city of New Bedford, Massachusetts, and the rule was declared not unconstitutional. The validity of the so-called Shern Act of Pennsylvania which prohibits officers and employees of cities of the first class of the state from engaging in political activity was upheld by the courts of Pennsylvania in Commonwealth ex rel Rotan v. Hasskarl and Duffy v. Cooke. In the recent case, Stowe v. Ryan, the Supreme Court of Oregon affirmed the decision of the Civil Service Commission of Multnomah County, Oregon, in removing a classified employee from the service for taking active part in politics prohibited by the civil service law of the state for counties, and declared that the provision of the civil service law was constitutional.

In no case has the court invalidated the law or rule of the civil service commission prohibiting solicitation of political contribution in the service and partisan activity of civil service employees upon the ground of unconstitutionality. From the decisions above mentioned, it appears clear that the constitutionality of the restrictions on political activity of civil servants can no more be doubted. The courts have unanimously sustained the plenary power of the state to prescribe such restrictions upon its officers and employees. It has been pointed out that, when the citizen, having no constitutional right to be a public officer or employee, voluntarily enters the employ of the state, he puts himself under regulations prescribed for the promotion of

efficiency and integrity in the discharge of public duties or for the maintenance of a proper discipline in the public service; and, as long as he chooses to remain in the employ of the state, he surrenders his constitutional rights, the exercise of which has been deemed incompatible with efficient and impartial service.

In recent years we have witnessed an extensive movement for unionization among civil servants. Civil service unions as a constructive force in American public administration and the potentialities of employee organizations in the form of unions or work councils as a machinery for staff-management co-operation are questions with which we have not been concerned. What we have discussed are the effects of unionism in the civil service upon the doctrine of neutrality.

While the danger of a large scale sympathetic strike is remote and, on the whole, affiliation of civil service unions with political parties has not become a problem, the difficulty centers around whether it is possible to reconcile the political or economic interests of civil servants with the public confidence in their impartiality and disinterestedness.

Civil service unions have not hesitated to use political weapon whenever necessary to enforce their demands. The rule relating to political activity has not been effective so far as such activity by organizations of civil service employees is concerned. This is largely due to the fact that officials of these organizations are usually not employed in the service, and hence discipline for infractions of the rule relating to political activity is highly difficult, if not entirely impossible. There has been a good deal of complaint by members of Congress against the bringing of political pressure upon them by organizations of federal employees for favorable legislation. There is also fear of the danger of predominance by civil service unions in governmental policies. Realistically, as long as the compensation, hours, and conditions of work are all fixed by the legislature, and as long as there is no other channel through which their views on these matters may be effectively presented, political pressure upon the legislature by civil service unions is inevitable.

If the present undesirable relationship between unions of federal employees and Congress is to be remedied, the only solution appears to be in the delegation by Congress of virtually all its present control over personnel matters to an administrative

body. Members of the latter body will not be subject as are members of Congress to political pressure from the employees.[1] In fact, federal employee unions have themselves recognized the impropriety of Congressional regulation of personnel matters in detail, despite their increasing success in securing desired legislation from Congress.

The personnel agency plays a very significant part in establishing harmonious relationship between the administration and the employee organizations. Greater attention should be paid to such matters as pay, hours, and other conditions of work. These conditions affect vitally the welfare of employees, the neglect of which will always cause discontent and may in the long run precipitate a strike by such employees. The personnel agency should keep itself informed as to these conditions in all branches of the service and should recommend appropriate action where the cause of discontent exists. The danger of strikes will be lessened and affiliation with outside groups less necessary if unions of public employees should find the government more alert to their needs.

Many of the civil service unions are affiliated with organized labor. From time to time objections to this affiliation have been voiced. It has been held that public employees, being servants of the whole community, cannot properly identify themselves with the labor class which is but a part of the community. However, so far as organized labor does not enter politics under an independent banner, prohibition of affiliation may not seem justifiable. The possibility of growth of class consciousness or bias is a broader question depending upon future political and economic developments. In 1926 the British civil service was involved in a spectacular politico-economic controversy; and we have yet to see whether the civil service neutrality can be maintained if burdened with any "vital problem of conscience."

The development of the code of professional ethics by members of the civil service as an independent professional group is highly desirable. Civil servants in each of the governmental jurisdictions need to have a common organization for such a purpose. An organization of this nature would cut across the

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[1]Lewis Mayers, The Federal Service (New York: D. Appleton & Co., 1922), p. 560.

traditional demarcation of professions by emphasizing the common ground that they are public employees of the community and as such they have common responsibilities and duties to the public, irrespective of their individual functions or differences in the nature of the work in which they are engaged. Before such an association is organized, the existing groups of civil service employees in the various jurisdictions which have comparatively large membership, such as the National Federation of Federal Employees and the Municipal Employes Society of Chicago, may well take the initiative step. This initiation may be followed by similar groups in other jurisdictions; and if it should be found necessary, a nation-wide common code of ethics for civil servants may be adopted, as in the case of the teachers' code. In such a code, the proper status of the civil servant in relation to party politics and to the community as a whole should be emphasized: the unswerving loyalty to the government of the day, impartiality in political affairs, discreet reticence in controversial issues, and equal and undiscriminative treatment to all persons. Proper measures of professional discipline are necessary in order that the code may be adequately observed by all members.

Internal control as such has great advantages over external guides. Professional standards embodied in the code of ethics will likely be much more effective in the regulation or control of the individual conduct. The problems of discipline will become less frequent. Public confidence in the civil service will be greatly improved. Since the inefficacy of external control is almost always detectable, conduct codes will be in the long run the most reliable safeguard of the civil service neutrality. The conditions such as proper organization of civil servants, freedom from economic want, and independence of political pressure in the conduct of civil service are essential to such development; but they are by no means insuperable barriers. It requires, however, statesmanship and determination on the part of civil service employees to take such a step.

It may be submitted that the general trend in this country is toward the development of neutrality of the civil service. In the federal service and in some cities where the spoils politics has been more successfully checked, the tradition of civil service neutrality has been fairly well established. The greatest problem in most of the governmental jurisdictions is the age-old problem

of political patronage. Whether or not the American people will develop sufficient interest in efficient government to insist upon a non-partisan and neutral civil service remains, in large measure, to be revealed. The work that has been done in arousing public interest in the government by civic groups and research agencies, the enumeration of which is here unnecessary, is remarkable and most encouraging. A part of this responsibility lies in the civil servants themselves; they must realize the full significance of their neutrality. The public, political directors, and civil servants must learn to regard the civil service as the impartial instrument of the state, to be used by whichever political majority is in office.